The Solicitors' Journal

[ESTABLISHED 1857.] [REGISTERED AS A NEWSPAPER.]

VOL. LXXX. No. 43 [PAGES 841 TO 860]. Saturday, October 24, 1936.

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DEREK OSBORNE,
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Town Hall,
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14th October, 1936.

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ERNEST EDWARD FORREST, formerly, Managing Clerk with Marsden & Son, Solicitors Camberwell, and of 228, Caulfield Road, East Ham. Will the above or anyone knowing his address please communicate with Chamberlayne Keene & Co., Solicitors, Donington House, Norfolk Street, W.C.2.

The Solicitors' Journal

VOL. LXXX. **Saturday, October 24, 1936.** No. 43

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Current Topics.

Lord Mansfield and the Law Merchant.

So accustomed are we to text-books as well as statutes treating of every aspect of commercial law that we are apt to forget how comparatively modern has been the crystallisation of the rules governing the relationship of parties to mercantile contracts, and how much we owe to the genius of LORD MANSFIELD, the great Chief Justice of the eighteenth century, for accomplishing this end. To this aspect of his labours, as well as his career generally, we are introduced anew by the volume just issued, from the pen of Mr. C. H. S. FIFOOT, whose scholarly work published a year or two ago on "English Law and its Background" showed him the possessor of the art of skilful presentation, coupled with the ability of making the historical development of his subject a story of singular fascination. In that work, and now more fully in his elaborate study of MANSFIELD, he enlarges on the magnitude of the debt the commercial community, as well as the legal profession, owe to the Chief Justice's efforts to emancipate the law from obsolete notions. His practical success in incorporating the law merchant into our system entitles him to our reverential admiration, although his unconventional methods for attaining his ends might not entirely commend themselves to sticklers for procrustean etiquette. LORD CAMPBELL, in his "Lives of the Chief Justices," tells us that MANSFIELD "did much for the improvement of commercial law in this country by rearing a body of special jurymen at Guildhall, who were generally returned on all commercial causes to be tried there. He was on terms of the most familiar intercourse with them; not only conversing freely with them in court, but inviting them to dine with him. From them he learned the usages of trade, and in return he took great pains in explaining to them the principles of jurisprudence by which they were to be guided." Nowadays, as Mr. Justice MACKINNON has told us, "the judge is assisted or instructed not by special jurors, or the bystanders in court, nor (so far as is known) by private colloquy with gentlemen from the City, but by the evidence of expert witnesses"—a mode of arriving at the true conclusion probably more orthodox but certainly much more expensive.

Civil Judicial Statistics.

THE Civil Judicial Statistics for the year 1935, which are compiled by the County Courts Branch, Lord Chancellor's Department, Millbank House, S.W.1, and were recently published by H.M. Stationery Office (Cmd. 5277, price 1s. net), contain the customary amount of informative matter and provide, incidentally, a sound basis for gauging the increase or otherwise of business in the various courts of justice and tribunals over a period of years. In the current publication the comparative table gives, in relation to the courts concerned, the total proceedings commenced in the year 1913, and in each year from 1925 onwards, together with the annual average of the five five-year periods beginning in 1911 and ending last year. Thus a genuine review of litigation and other court business of a civil character is rendered possible over a considerable period of time, and those who choose to study the figures will be in a position to extract from them accurate and informative conclusions. This comparative table is followed by twenty-seven others dealing more particularly with the various courts. Considerations of space preclude, of course, any detailed reference to the mass of information contained in the publication in question, but it may not be out of place to draw attention to a few of the salient features. The number of appeals to the Judicial Committee of the Privy Council during 1935 (all the following figures are based on the number of proceedings commenced during the year in question) was ninety-two, compared with 104 for the previous year. Corresponding figures for the House of Lords were, in chronological order, sixty-nine and forty-two. In the Court of Appeal an increase from 582 to 629 is recorded, while in the case of the High Court as an appellate tribunal there was a decline from 348 to 262 matters. The respective totals for the Chancery, King's Bench and Probate, Divorce and Admiralty Divisions were for 1935: 5,631, 82,501 and 5,869; for 1934: 5,895, 84,831 and 5,480. County court proceedings have increased moderately from 1,226,809 in 1934 to 1,229,401 last year, a much higher rate of increase being recorded in the case of the Railway Rates Tribunal (from 208 to 405), the proportion being still higher for the Railway and Canal Commission where the number has risen from forty-two to ninety-two. The grand total for the year including, in addition to the courts already named, the figures for the Patents Appeal Tribunal, the Mayor's and City of London Court, the Borough Courts of Record and other inferior civil courts, the Ecclesiastical Courts, and the Lord Chancellor's jurisdiction in lunacy amounts to 1,410,073, compared with 1,406,031 for the previous year.

Road *versus* Rail.

THE reserved decision of the Licensing Authority for the Metropolitan Traffic Area (Mr. GLEESON ROBINSON) in the case in which the four main line railway companies opposed the renewal of licences granted in 1934 to Bouts-Tillotsons Transport, Ltd., under the Road and Rail Traffic Act, 1933, was issued last Monday. The company which operates a number of trunk services between London and various provincial centres applied for a licence in respect of 139 motor vehicles and 56 trailers. The licence granted as a result of the decision is for 128 vehicles and 42 trailers, the reduction being to the extent of the number of vehicles which it was admitted in evidence had not been in regular use. With regard to the facilities offered by the alternative methods of transport, Mr. ROBINSON expressed himself as satisfied that rail transport could carry with few exceptions the whole of the goods which the applicants had carried in the past, that they could carry a very much greater quantity of similar goods which are at present carried by road, and that similar goods to those which were generally carried by the applicants were frequently carried by rail for more or less similar journeys with satisfaction to the persons for whom they were carried. In considering whether the facilities provided by railway transport were suitable and adequate, he was satisfied that without the facilities which the applicants provided, traders would be deprived of the opportunities to avail themselves of the advantage of road transport for the goods for which road transport was able to meet their requirements more suitably. In considering the interests of the public generally, Mr. ROBINSON stated that it was necessary to take a very long view, and to make very sure that a short-sighted policy was not adopted by premature action dictated by a mistaken effort to provide a quick remedy for any existing evils. "I am satisfied," he said (we quote from *The Times*), "that it is very greatly in the national interest that, if possible, all forms of transport should be permitted to develop, subject to necessary control, the advantages which they can respectively offer." A licence covering the number of vehicles and trailers already mentioned was accordingly granted.

The Case for the Railways.

BEFORE leaving the subject, a word should be said in regard to the case for the railway companies who opposed the renewal of the transport company's licence. As set out by Mr. ROBINSON, the main objections of the railway companies to the granting of the licence were substantially as follows: The facilities available for the carriage of goods by rail were suitable for carrying, with certain exceptions, the goods proposed to be carried by the applicants on long-distance trunk services. The capacity of the railways was not fully utilised. Railway rates and charges were based on a principle which was settled in 1922, and adopted in the interest of traders and industry generally, the principle being to charge not according to the cost of service, but according to what the traffic would bear, so that certain classes of goods were carried at less than their proportionate share of the cost of carriage, and in other classes at more. So long as it was considered that this was in the national interest, the railways were subjected to competition by road transport which they could not meet, because they were compelled to carry all goods entrusted to them, whereas road operators could choose the traffic which they wished to carry and which they found they could handle most conveniently, and could carry such traffic at rates which were in many cases very much lower than the railways could, having regard to their public obligations, afford to charge. It may not be unfitting on the general question to mention another aspect of the matter which is frequently before the ordinary road user. On grounds of convenience, to say nothing of considerations of road safety, there appears to be much to be said for goods traffic—the observation applies chiefly, of course, to that of a heavy character—being confined to the railway as far as is reasonably possible.

Driving Licences: Draft Regulations.

SECTION 3 (1) of the Road Traffic (Driving Licences) Act, 1936, provides (in substance) that where under s. 6 of the Road Traffic Act, 1934, any person is required to pass the prescribed test of competence to drive, and the test passed by him is a test prescribed by sub-s. (5) of that section with respect only to the driving of any specified class or description of vehicles, the licence granted to him shall specify that class or description of vehicles, and he shall be deemed not to be the holder of a licence to drive motor vehicles of any other class or description. In order to give effect to these provisions the Minister of Transport has prepared draft regulations prescribing driving tests for seven different groups of classes of vehicles. The main group (I) comprises heavy locomotives, light locomotives, motor tractors, heavy motor cars, motor cars and motor tricycles equipped with means for reversing. Tricycles not so equipped appear in a separate group (III), with motor cycles (with or without sidecars). Other groups relate to trolley vehicles (II), track-laying vehicles steered by their own tracks (IV), invalid carriages (V), vehicles (other than those in the preceding group) constructed or adapted for use by a disabled driver (VI), and lawn mowers, rollers not exceeding two and a half tons in weight unladen, and vehicles controlled by pedestrians (VII). A person who passes a test relating to vehicles only in one of these groups will, under the section aforesaid, be granted a licence limited to vehicles within that group, but subject to certain specified conditions a licence limited to the driving of any particular class is to have effect as a provisional licence to drive vehicles of any other class. The regulations exempt learner-drivers of vehicles not constructed or adapted to carry more than one person from the obligation to be accompanied by an experienced driver, while the learner-driver of a solo motor cycle is forbidden to carry a pillion passenger other than an experienced driver. The particulars to be given by an applicant for a driving licence have not been substantially altered, but the form of application has been simplified as has also the test for vehicles in group VII, licences for which are to be granted for the reduced fee of two shillings and sixpence.

Ribbon Development Act: Application to London.

THE Restriction of Ribbon Development Act, 1935, does not extend to the Administrative County of London, save in so far as its provisions may be applied by orders made under s. 20. By sub-s. (3) of the same section the Minister of Health is empowered, in substance, to confer by order on the London County Council the like powers as are conferred by s. 17 of the Act upon authorities who are local authorities for the purposes of the Public Health Acts, 1875 to 1932. Section 17 enables a local authority as a condition of its approval of plans for the erection of a new building to require "the provision and maintenance of such means of entrance and egress, and of such accommodation for the loading and unloading of vehicles, or picking up and setting down of passengers, or the fuelling of vehicles," as it may specify, for the purpose of limiting interference with traffic along roads adjacent to the proposed building. The foregoing provision applies to any building containing a space of not less than 250,000 cubic feet (measured in accordance with rules already noted in these columns), and to any place of public resort, refreshment-house, station for public service vehicles, petrol filling station, or garage used or to be used in connection with any trade or business; while "the erection of a new building" covers the operations specified in s. 23 of the Public Health Acts Amendment Act, 1907. The Minister of Health has recently made an order under s. 20 (3) of the Restriction of Ribbon Development Act, 1935, as a result of which the London County Council will from 1st January next be invested with the powers contained in s. 17 of the Act—powers which are, of course, now enjoyed by the local authorities for public health outside London. An order has also been made, under s. 20 (2) of the Act, by the Minister of Health conferring on

the Common Council of the City of London and the Metropolitan Borough Councils the powers possessed by local authorities outside London under s. 68 of the Public Health Act, 1925, and s. 16 of the Restriction of Ribbon Development Act, 1935, in regard to the provision of parking places. The Act, it should perhaps be noted, provides that powers conferred by such orders of the Minister of Health shall not be exercised except after consultation with the Minister of Transport.

Recent Decisions.

In *Cole* v. *Police-Constable* 443A (p. 855 of this issue), the court (Lord Hewart, C.J., and du Parcq and Goddard, JJ.) held that Westminster Abbey was Royal Peculiar and that the Dean was entitled to give an order excluding the appellant from the building (whether at times when divine service was being held or at other times), and that the constables who ejected him without unnecessary violence after requesting him to leave were obeying a lawful order. At the time of his ejection, during divine service, the appellant was wearing a badge bearing the words "Cole's Sightseeing Tours, Guide." A permit which he had previously held to act as guide had expired and its renewal had been refused.

In *Kearns* v. *Gee, Walker and Slater Ltd.* (p. 854 of this issue), the Court of Appeal reversed the decision of a county court judge and held that the appellant bricklayer employed by the respondents was entitled to damages in respect of injuries sustained while working in one part of a building as a result of bricks falling from a wheelbarrow being used by a workman on a higher floor of the same building. The defence of common employment was excluded by para. 31 of the Building Regulations, 1926, made under the Factory and Workshops Act, 1901, which provides that any part of premises in which any person is habitually employed shall be covered so as to protect any person working in that part being struck by falling material. The county court judge was, the Court of Appeal intimated, wrong in asking himself whether the appellant was habitually employed at the part where the accident happened. It was sufficient that "any person" was habitually employed there.

In *Mezger, M. R.* v. *Mezger, E. A.* (*The Times*, 16th October), the court (the President of the Probate, Divorce and Admiralty Division, and Langton, J.) discharged a maintenance order against a husband, holding that the fact that the marriage between him and his wife, who were German nationals, had been dissolved by a German court on grounds which would not have been recognised as entitling him to a dissolution of marriage in England, did not justify a refusal on the part of the magistrates to revoke the order in question.

In *Ritz Cleaners, Ltd.* v. *West Middlesex Assessment Committee* (p. 854 of this issue), a Divisional Court (Lord Hewart, C.J., and du Parcq and Goddard, JJ.) upheld a decision of the Rating Appeals Committee for Middlesex to the effect that the respondents' premises were an industrial hereditament within s. 3 (1) of the Rating and Valuation (Apportionment) Act, 1928, but that certain rooms on the premises were a retail shop, and that the net annual value must be apportioned. The public had direct access to the premises. In the room facing the street there was a plant for cleaning and dyeing articles, and these activities as well as those of pressing and packing were carried on in other rooms.

In *Guildford Trust Ltd.* v. *Dasi* (*The Times*, 17th October), judgment was given for the plaintiffs who claimed the balance of principal and interest due on promissory notes, the latter at the rate of 80 per cent. per annum. Lewis, J., intimated that the rate of interest charged was reasonable in the circumstances. The learned judge said, moreover, that he unhesitatingly accepted the evidence given for the plaintiffs and totally rejected that for the defendant.

In *Warner Bros. Pictures, Incorporated* v. *Nelson* (p. 855 of this issue), the plaintiffs, between whom and the defendant there was a contract whereby the latter was to render to the former her exclusive services as a motion picture and/or legitimate stage actress, obtained an injunction restraining the defendant for three years from the date of the judgment, or during the currency of the contract, whichever should be the shorter, from rendering within the jurisdiction of the court, and without the written consent of the plaintiffs first had and obtained, any services for or in any motion picture or stage production or productions of any person, firm or corporation other than the plaintiffs. Branson, J., intimated that to grant an injunction covering all the negative covenants in the contract would be open to the objection of forcing the defendant to perform the contract or remain idle (see *Whitwood Chemical Co.* v. *Hardman* [1891] 2 Ch. 416) but that objection was removed by the restricted form in which the injunction was sought, and granted.

In *Olsen* v. *Corry and Another* (p. 855 of this issue), the plaintiff claimed damages for personal injuries sustained while swinging an aeroplane propeller at Gravesend Aerodrome. Greaves-Lord, J., giving judgment last term found negligence by the company and the pilot, and assessed the damages at £5,000. On the question whether the deed of apprenticeship exempted the company from liability, the learned judge now held that the deed, which purported to relieve the company in respect of negligence, even though they failed in their duty, was so wide in the extent that it purported to relieve them, that it was not for the benefit of the plaintiff and therefore void. The doctrine of common employment did not apply, and the company could not delegate to their servants their duty to provide a proper system of tuition which would preclude the possibility of danger at the aerodrome.

In *Glamorgan County Council* v. *Ayton* (*The Times*, 21st October), a Divisional Court upheld a decision of a district auditor who had allowed subsistence expenses to the members of the county council in addition to the travelling expenses provided for by s. 294 (1) of the Local Government Act, 1933. That section did not, it was held, authorise the payment of any allowance for subsistence.

In *Cafferata and Another* v. *Wilson; Reeve* v. *Same* (p. 856 of this issue), a Divisional Court upheld a decision of the stipendiary magistrate for the City of Liverpool to the effect that a dummy revolver was within the meaning of the expression "firearm" as used in s. 12 (1), of the Firearms Act, 1920. The article in question was similar in shape and appearance to an ordinary revolver, but it had a solid imitation barrel bored for a distance of $\frac{3}{8}$-inch only from one end, and, at the other, chambers bored to 1/32-inch diameter at the back and about half that diameter at the front, with a vent-hole for the escape of gas. As sold it was incapable of discharging shot, but it could readily have been rendered so capable.

In *Brooks* v. *Jefferies* (p. 856 of this issue), a Divisional Court reversed a decision of Swindon justices, and held that the respondent who had stopped his car near a "Halt at major road ahead" sign (which was some twenty yards distant from the road junction), and then proceeded slowly and cautiously into the major road, had unlawfully failed to conform to the indication of a traffic sign under s. 49 (*b*), of the Road Traffic Act, 1930. The offence took place at night when only the word "Halt" was illuminated by reflecting lenses but the respondent had previously passed the sign by daylight.

In *Dolby* v. *Halmshaw* (*The Times*, 22nd October) a Divisional Court upheld a decision of the justices for the Parts of Lindsey, Lincolnshire, and held that the term "coursing" as used in s. 5 of the Game Licences Act, 1860, did not necessarily involve the comparative trial of dogs. The respondent, who was hunting a hare with two greyhounds, was held, therefore, to be "coursing" within the exception in the Act. The contrary proposition which underlies the decision of *Rex* v. *Clarke* [1930] N.I. 174, was not approved.

The Local Government Act, 1933.

ACQUISITION OF LAND BY AGREEMENT SUBJECT TO RESTRICTIVE COVENANTS.

THE question to be decided is whether s. 176 of the Local Government Act, 1933, operates to prevent a local authority from obtaining the benefit of the decision in *Kirby* v. *Harrogate School Board* [1896] 1 Ch. 437.

It is advisable to state the position fully (1) as it was immediately before the commencement of the Local Government Act, 1933, and (2) as it is now.

(1) *Before 1st June*, 1934.

Section 175 of the Public Health Act, 1875, empowered a local authority to acquire land by agreement for the purposes and subject to the provisions of that Act.

Section 176, *ibid.*, incorporated the Lands Clauses Acts, except the provisions relating to access to the special Act, and except s. 127 of the Lands Clauses Consolidation Act, 1845. The section also provided that before putting in force *any of the powers of those Acts* with respect to the purchase and taking of lands otherwise than by agreement, compliance should be made with certain conditions.

The relevant provisions of the Lands Clauses Acts are ss. 6 to 15 and 16 to 68 of the Act of 1845, headed respectively "With respect to the purchase of lands by agreement" and "With respect to the purchase and taking of lands otherwise than by agreement."

A question as to the extent and meaning of the incorporation effected by s. 176 of the 1875 Act, as regards land acquired by agreement, came before the courts in *Kirby* v. *Harrogate School Board* [1896] 1 Ch. 437. In this case it appeared that land was acquired by the board by agreement, without the board having to exercise its compulsory powers. The land was subject to certain restrictive covenants, and it was found during the case, or admitted, that the proposed user of the land by the board would involve a breach of the covenants.

Counsel for the plaintiffs admitted that on the authorities if the land had been acquired by the board under its compulsory powers, they would have had no remedy by injunction, but would, in lieu thereof, have been entitled to have any damage they sustained assessed under s. 68 of the Lands Clauses Consolidation Act, 1845.

North, J., held that where a public body, in the *bonâ fide* exercise of its powers, purchased land for its public purpose, it was in no different position in regard to the way it could lawfully use such land if it had purchased by agreement, than it would have been if it had put in force its compulsory powers. In neither case would the owner of an easement or right over the land have received notice. He would not be prejudiced by the fact that the purchase was voluntary, and the remedy would be to get compensation for the damage he sustained, under the Lands Clauses Acts. He quoted the case of *Baily* v. *De Crespigny*, L.R. 4 Q.B. 180, as showing that where land had been acquired for a public purpose, partly under compulsory power and partly by the voluntary act of the vendor, the law on the point was the same as if the purchase had been carried out wholly compulsorily. He said that he did not see that it made any difference whether the purchase had been carried out partly or wholly by agreement.

The case was taken to the Court of Appeal, where the decision of North, J., was upheld. Lindley, L.J., said: "It was contended that upon the true construction of ss. 19 and 20 of the Elementary Education Act, 1870"—these were similar to ss. 175–6 of the Public Health Act, 1875—"and the Lands Clauses Consolidation Act, if the school board took this land by agreement, no person who was injuriously affected could avail himself of s. 68 of the Lands Clauses Consolidation Act. No doubt that section, *which does not give any power to the undertakers*, but gives a right of compensation to a person injured by the execution of the works, is found at the end of a group of sections, headed 'with respect to the taking of lands otherwise than by agreement.' That argument has been advanced before, but always without success: *Hammersmith Railway Co.* v. *Brand* (1869), L.R. 4 H.L. 171. In my opinion, s. 68 clearly applies to all purchases whether compulsory or not."

In other and earlier cases somewhat similar conclusions were reached: see, e.g., *Clark* v. *London School Board* (1874), L.R. 9 Ch. App. 120; *Hammersmith & City Railway Co.* v. *Brand*, *ante*; and *Metropolitan District Asylum Managers* v. *Hill* (1881), 6 App. Cas. 193. We are not concerned, however, with the question whether action will lie in cases where no provision is made for compensation or as to liability for damage done as a necessary result of the exercise of statutory powers. The points with which we are concerned, and which were decided by *Clark* v. *London School Board* and *Kirby* v. *Harrogate School Board*, were:—

(1) That, where provision is made for injury caused by the exercise of statutory powers, other remedies are excluded;

(2) That, since invoking s. 68 does not involve the exercise of *a power*, the procedure governing "the putting into force of any powers of the Act with respect to the purchase and taking of lands otherwise than by agreement" (under s. 176 (2) of the Public Health Act, 1875) need not be complied with; and

(3) That, in consequence of (2), where the Lands Clauses Acts are incorporated with an Act authorising the acquisition of land, then s. 68 (providing for compensation and thereby excluding other remedies) applies whether the land is acquired voluntarily or compulsorily.

It is quite possible that in 1845 the legislature did not intend the consequences which arose as a result of *Kirby* v. *Harrogate School Board*, and the real reason for the decision appears to be, though other arguments as to the meaning and effect of the headings to the various parts of the Act of 1845 have been raised, that it is due to the unfortunate wording of the first words of s. 176 (2) of the Public Health Act, 1875, which referred to the putting into force of the *powers*, rather than the parts, or sections, of the Act.

(2) *After 1st June*, 1934.

By the Local Government Act, 1933, s. 307 and Eleventh Schedule, the main part of s. 175 and the whole of s. 176, of the Public Health Act, 1875, are (*inter alia*) repealed.

Part VII of the Local Government Act, 1933, deals with "Acquisition of, and Dealings in, Land" by local authorities. Section 157, *ibid.*, empowers a local authority to acquire any land by agreement for the purpose of any of its functions under that or any other public general Act.

Section 176, *ibid.*, enacts that where under that part (Pt. VII) of the Act, a local authority is authorised to acquire land by agreement, the Lands Clauses Acts, *except the provisions relating to the acquisition of land otherwise than by agreement* and the provisions relating to access to the special Act, and except ss. 127 to 132 of the Lands Clauses Consolidation Act, 1845, are to be incorporated with the Act.

The essential difference between the relevant provisions of the Public Health Act, 1875, and those of the Local Government Act, 1933, in relation to acquisition of land by agreement, rests in the fact that the former Act incorporated the whole of the Lands Clauses Acts (with certain minor exceptions), while the latter Act incorporated the whole of those Acts, *except the provisions as to the acquisition of land otherwise than by agreement*, and other minor provisions.

In *Ferrar* v. *Commissioners of Sewers for London* (1869), L.R. 4 Ex. 277, it was held that if the special Act expressly excludes the provisions just mentioned, then s. 68 does not apply and no right to compensation can arise.

It may, perhaps, be argued that s. 176 of the Act of 1933 does not amount to an express exclusion of those sections and, therefore, if by any other means those provisions or,

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at any rate, s. 68 can be held to apply, s. 176 will not operate so as to exclude them or it. This appears to be a reasonable assumption since :—

(1) Section 176 is an incorporating, and not an excluding, section ; and

(2) it seems that to ascertain what the section actually incorporates, the phrase " the Lands Clauses Acts, except the provisions relating to the acquisition of land otherwise than by agreement " should be read as a whole and not disjunctively. To read it in the latter way would put a construction on the section which is not justified and which, it is submitted, was obviously not intended.

On the other hand, s. 1 of the Act of 1845, permits the exclusion of clauses and provisions in that Act by express exception ; thus the exclusion of provisions may take place by exception as in the case of the 1933 Act. This, however, is not of very great weight since, as will appear, it may be argued that the mere fact of excepting the application of parts of an Act will not operate as a definite exclusion in all circumstances and other methods of effecting the inclusion of those parts may be found.

It may be assumed, therefore, in view of the above, that the exception of the provisions relating to the purchase of land otherwise than by agreement does not amount to an *express exclusion* of those provisions and that *Ferrar* v. *Commissioners of Sewers for London* does not, therefore, apply to the new circumstances arising out of s. 176 of the Local Government Act, 1933. The problem is to ascertain whether those provisions are either excluded or included in any other way.

However, since there is an express *exception* of those provisions, it is clear that the legislature either

(1) did not intend those provisions to apply to the acquisition of land by agreement ; or

(2) was satisfied that, by virtue of other provisions or by operation of law, the provisions would in any event be applicable.

The view that the legislature would not have interfered with the rule in *Kirby* v. *Harrogate School Board* without definite and clear words cannot be accepted. Here the words of the section are different from those of the comparable provisions of the Act of 1875, and it must be assumed that Parliament intended to attach a meaning to those words. One cannot, therefore, it is submitted, examine the words of the repealed provision with a view to attaching the meaning of those words to the new provision.

In the first place, clearly the intention was that the provisions which by their nature could relate only to compulsory purchase, should not apply to acquisition by agreement. It may be deduced from *Kirby* v. *Harrogate School Board*, however, that s. 68 of the Act of 1845 is not a provision of that nature.

The question resolves itself, therefore, into one of deciding whether, where certain sections of an Act are incorporated with another Act, other sections of the first Act, not specifically incorporated with the second, can be imputed thereto as being necessarily complementary to the incorporated provisions.

On this point the question which arose in *Wallasey Tramway Co.* v. *Wallasey Local Board* (1883), 47 J.P. 821, and which led to the passing of the Public Health (Confirmation of Bye-laws) Act, 1884, may be relevant.

The circumstances were as follows :—

Section 128 of the Towns Improvement Clauses Act, 1847, ss. 68 and 69 of the Town Police Clauses Act, 1847, and s. 42 of the Markets and Fairs Clauses Act, 1847, giving powers to make bye-laws (respectively) as to slaughter-houses, hackney carriages, public bathing and markets, were incorporated with the Public Health Act, 1875, by that Act.

Section 128 of the first-mentioned Act provided that the bye-laws should be made " *in manner hereinafter provided.*" The manner provided by the Act was set out in ss. 200–209. These sections were, however, incorporated with the 1875 Act, which provided a special procedure in ss. 182–186 for the making and confirmation of bye-laws under the Act.

This led to some doubt as to the proper authority to confirm bye-laws made under the section mentioned, and it seemed from the last-mentioned case that, notwithstanding s. 184 of the Act of 1875, the provisions of s. 202 of the Towns Improvement Clauses Act, 1847, applied to bye-laws made under the enactments mentioned. The matter finally resulted in the passing of the Public Health (Confirmation of Bye-laws) Act, 1884, which removed the difficulty.

The above case is in part parallel to the present one, but a distinction lies in the fact that bye-laws under s. 128 of the 1847 Act were specifically to be made in the manner thereinafter appearing. If anything in the provisions of the Lands Clauses Act of 1845 relating to acquisition by agreement had given such a specific pointer to s. 68 of that Act, then the last-mentioned case would be definitely in point. It does not do so, however, and a definite extension of the effect of that decision would be necessary.

We have now reached what may well be considered a deadlock.

On the one hand we have the case of *Ferrar* v. *Commissioners of Sewers for London* stating that where the part of the Act relative to the acquisition of land otherwise than by agreement is *expressly excluded*, s. 68 cannot apply to acquisitions by agreement. On the other hand we have *Wallasey Tramway Co.* v. *Wallasey Local Board*, which decided that where certain sections of an Act are incorporated in another Act, an express reference in one of the incorporated sections to another section, not incorporated, makes applicable the provisions of that section though not incorporated, in spite of express provisions in the incorporating Act dealing with the same matter.

There remains a gap between these two cases wherein lies the dividing line. The question still remains as to which side of the dividing line is occupied by the present circumstances.

Unlike the *Wallasey Case*, no express reference is made to s. 68. It is merely that s. 68 is appropriate and has been held to apply under the old law where the whole of the Act was incorporated even though it was contained in a part of the Act which was, according to the headings of the Parts, not relevant.

Since one must at once, for the purposes of coming to a proper conclusion, dissociate the words of the new section from those of the old, one must assume at the start that *Kirby* v. *Harrogate School Board* is not applicable and endeavour to prove, if possible, the negative of that proposition. One must not assume it to be applicable until it is proved that that is not so.

In these circumstances, it is apparent that the *Kirby Case* has not been proved to be applicable. The nearest point one can approach towards proving it to be applicable is laid down by the *Wallasey Case*, from which one can hold that, assuming there is no express exclusion of the section, as in *Ferrar's Case*, by the incorporating Act, an express reference in the incorporated Act to a section not incorporated will " pull in " as it were, that section as though it were incorporated.

Possibly the courts might, if and when the necessity of reaching a decision arises, extend the *Wallasey* decision to such cases as the present, where the reference is not express but might reasonably be implied. Certainly as regards the particular wording of the 1933 Act, it would not appear necessary to overrule *Ferrar's Case* to do so.

The conclusion must be, therefore, that, unless the *Wallasey* decision is extended, a local authority purchasing land by agreement under the Local Government Act, 1933, is not entitled to the benefit of the decision in *Kirby* v. *Harrogate School Board*, and that it is not entitled, in using land acquired by agreement, to override restrictive covenants subject to the

payment of compensation. A local authority is, therefore, in the same position as any other purchaser.

This subject is one of great importance to all local authorities and will apply in the case of all land acquired by agreement under the Local Government Act, 1933, that is, since 1st June, 1934. It can only be a matter of time before the courts are called upon to give a decision on the subject.

Costs.

NOTES ON DISBURSEMENTS.

(Continued.)

We dealt in our last article with the requirements of r. 27 (29) (*a*) of Ord. 65, relating to the inclusion, in a solicitor's bill of costs, of unpaid "disbursements." It will be remembered that sub-r. (29) (*a*) provides, *inter alia*, for the item of unpaid counsel's fees, but considerable care will henceforth have to be exercised in including this item in a bill of costs, even if the amount is specifically set out, with an express statement to the effect that it represents unpaid counsel's fees at the time when the bill is delivered.

As we have already observed, the item of unpaid counsel's fees quite clearly seems to be a subject for the relief afforded by sub-r. (29) (*a*), providing certain requirements are met, and the point that these items were not recoverable on the ground that they were not costs due, since they were mere gratuities, does not seem to have been taken by the Court of Appeal, as it now appears it might have been, in the case of *Smith* v. *Howes* [1922] 1 K.B. 590, which was a counsel's fees case.

A perusal of the judgments in the case of *In re a Solicitor*, reported 21st March last (80 Sol. J. 224), leaves one in some doubt, however, as to whether much reliance can be placed on sub-r. (29) (*a*) for relief so far as unpaid counsel's fees are concerned, for in that case Scott, L.J., was at pains to point out that ". . . we must not be understood to express an affirmative opinion that part of the regulation (sub-r. (29) (*a*)) can have the effect of authorising the inclusion in the bill of costs of any disbursement which is not due as a legally enforceable debt from the client to the solicitor." He went further when he said that "to enter unpaid counsel's fees in the bill of costs under the permissive words of the regulation would be a direct violation of the prohibition of the statute."

We cannot help feeling, therefore, that in view of these remarks it would be in the solicitor's interests to see that he is covered at least for the counsel's fees in all cases which he undertakes, in order that he may pay these fees before delivery of his bill of costs. In fact, it would not be unreasonable if the profession as a whole made it a rule never to incur counsel's fees without receiving from the client an adequate sum on account.

The position is, perhaps, a little unfortunate, especially as one might well assume from a perusal of sub-r. (29) (*a*) that, providing the requirements as to the unpaid items being specifically set out were strictly complied with, the relief afforded by the rule would be granted, but the observations of Scott, L.J., leave one in some doubt as to the precise effect of that sub-rule now, and to be on the safe side it would seem quite clear that the solicitor must take steps, *before* delivery of his bill of costs, to consolidate his position.

It will be observed that sub-r. (29) (*a*) relates to taxations of solicitors' costs under the Solicitors Act, 1843, and now under the Solicitors Act, 1932, so that the sub-rule necessarily applies to "solicitor and client" taxations only. In the case of taxations between party and party, the practice is considerably less harsh, and it is no uncommon thing for some disbursements in a bill of costs to await the result of the taxation before they are paid, in order to ascertain precisely what is allowed. It must be remembered, however, that a bill of costs as between party and party is a mere statement of facts, or a claim by one party against another, and the solicitor must, therefore, see that before delivery of his bill of unrecovered charges and disbursements he pays the disbursements that have been disallowed on taxation, otherwise he will be unable to recover them from his client, unless they are separately set out in his bill and are expressly stated to be unpaid.

In view of the decision in the case which was reported 21st March last, we feel that we cannot urge too strongly the necessity for seeing that the requirements of sub-r. 29 (*a*) are complied with strictly.

Arising out of this question of unpaid expenses, is the further question as to the disbursements which a solicitor may properly include in his bill of costs. This question was settled by the old case of *In re Remnant* (1849), 11 Beav. 603, which has been followed in several cases since.

Disbursements which may properly be included in a solicitors' bill of costs include counsel's fees, court fees, witnesses' expenses and fees, stamp duties on deeds, printer's bills, and all other fees and disbursements which are ordinarily treated as professional disbursements by the established custom of the profession.

Examples of payments which are *not* customarily regarded as disbursements proper to a bill of costs include estate duty, purchase money or interest thereon, the adverse party's costs, and a judgment debt.

The distinction is not unimportant, because it will be appreciated that whilst the solicitor is seriously restricted in his right of recovery in regard to professional disbursements that are proper to his bill of costs, he may conceivably find himself in a much more favourable position as regards non-professional expenses which he has incurred, at the express request of his client, but has not actually paid.

Company Law and Practice.

Fixed or Unit Trusts.—I.

I do not think that any apology is needed for introducing into this column the subject of fixed trusts. It is a subject which is very closely allied to companies, and which has recently been much in the public eye as a result of the report of the Departmental Committee which was appointed by the Board of Trade in March, 1936, to "enquire into Fixed Trusts in all their aspects and to report what action, if any, is desirable in the public interest." That committee reported on the 29th July, 1936, and its report (Command Paper 5259), moderately priced at 1s., will repay a careful study.

There are many, however, who have neither the time nor the inclination to read in full such a report, and it is chiefly for the benefit of those persons that this series of articles is written, in the hope that it may save them time and trouble, and at the same time give them some general idea of the committee's report. At the outset it may be observed that the expression "fixed trust" is a misnomer for the great majority of the trusts with which the committee was concerned. By far the most of these trusts are now what are known as "flexible trusts," and the committee adopted for all such trusts the phrase, which will be used in these articles, "unit trusts."

Somewhat paradoxically, it might be convenient to start this series of articles by reference to companies registered under the Industrial and Provident Societies Acts, 1893 to 1928, the reason being that the whole of the recommendations of the committee really hang on the attention of the legislature being first turned to an extension of those Acts. This is so important that I set out in full the paragraph of the report dealing with this vital problem:—

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"We have had our attention drawn to certain companies registered under the Industrial and Provident Societies Acts, 1893–1928, which appear to be advertising and pushing the sale of their shares by means which we are told could not be used if these companies had been registered under the Companies Acts. We think that if the Industrial and Provident Societies Acts are to be used as a means of registering what are in effect investment trust companies or property holding companies, steps should be taken to bring the prospectus provisions of these Acts into line with those of the Companies Act, 1929. This recommendation may seem to be beyond our terms of reference, but we make it because we fear that if legislation is promoted to deal with Unit Trusts on the lines which we suggest ingenious persons may see their opportunity to escape from the law by using, instead of Unit Trusts, companies incorporated under the Industrial and Provident Societies Acts."

No one who is alive to the possibilities will be disposed to cavil at the paragraph quoted above, and the committee are to be respectfully congratulated on having deliberately gone beyond the apparent scope of their reference and dealt with this problem.

From this we may conveniently pass to a few figures showing the immense growth of the unit trust movement, the importance of which has not yet been fully realised by many people. The first unit trust to be established in this country (the idea having come here from the United States of America) was so established in April, 1931; the growth seems to have been slow in the early stages—two were formed in 1932 and five in 1933. Then there was a great forward movement; twenty-four were established in 1934 and twenty-one in 1935; at the date of the report there were sixty-seven unit trusts in existence, and the committee estimated that about £50,000,000 has been invested in them. The sums spent by them on advertising in recent years have been large, "amounting probably to £250,000 and possibly to twice that figure," as the report says. These few figures will serve to show that what we are dealing with is a substantial movement, into which large sums of money have been put, and it is hardly surprising that the committee should recommend legislation in regard to it, free as it has hitherto been from many of the restrictions imposed for the benefit of the public under which analogous movements are worked.

What then is a unit trust? This requires a somewhat lengthy explanation, and it will perhaps be convenient before answering that question in detail to show you how the committee would define it for the purpose of any contemplated legislation. "The definition should," the report reads, "be so framed as to include any trust or association (other than a duly incorporated company) formed to acquire and hold or deal in stock, shares, securities or other property or rights in which the public is invited or allowed to acquire a participation, by whatever name called. But it should exclude—

"(*a*) a trust created solely for charitable purposes;

"(*b*) a trust created to secure debentures or other similar securities;

"(*c*) any trust or association where offers of participation are limited to finance houses or persons whose ordinary business it is to deal in property of the class to be acquired or dealt in by the trust or association."

The report then goes on to suggest that, as shares are sometimes placed in the name of a trustee who issues certificates which are then dealt in on the Stock Exchange (this is done to enable the shares or their equivalent to be dealt in on the Stock Exchange, as in the case of a foreign company), the Board of Trade should have power to exempt a trust or association formed to acquire and hold a block of securities in a single company if it be formed solely for the purpose of facilitating dealing in such securities on the Stock Exchange.

From a consideration of that definition we may well return to our question: What is a unit trust? The simplest of these is the fixed trust, which was merely an extension of the form of trust under which shares or securities in one company were vested in trustees, who held them on trust for persons to whom certificates were issued showing the beneficial ownership; this is the method adopted in New York for dealing on the Stock Exchange in the shares of English companies.

That form of trust has been in use for many years; then one day it occurred to someone to form a similar trust having as its assets not shares or securities in one company but shares or securities in a number of different companies. This was the origin of the fixed trust, from which has grown the tremendous movement with which we are now dealing. In the early stages the fixed trust was employed. The fixed trust works, briefly and generally speaking, in this way: the promoters buy a parcel of securities which are vested in trustees to be held by them on the trusts of a trust deed which is executed by the trustees. This parcel is then held on trust for the persons who become the beneficiaries in the appropriate proportions, without there being any power to vary the holding (except in exceptional circumstances), so that the purchaser of a sub-unit, as it is usually called, in a fixed trust knows that his due proportion of each investment must be held on trust for him without variation.

This fixity has now developed into flexibility; the net result being that the managers have wide powers of variation, so that, to quote the report, "the range within which investment is permissible may still be limited, but within this range the managers have as much freedom as the directors of an investment trust company to vary the investments."

In the case of a flexible trust the interest which an investor is asked by the manager to take up is a "unit," which is usually so adjusted as to cost the public about £1. The price at which units and sub-units are sold is generally based on the Stock Exchange prices on the day of, or the day previous to, the sale of the underlying securities, to which are added sums to include stamp duty on the purchase of the securities, brokers' commission and a service charge to cover, wholly or partially, expenses of management during the lifetime of the trust. "The total addition to the price arising from the various charges may amount to as much as 12½ per cent.," says the report.

If there be any who have not before run across unit trusts, it is hoped that the above brief explanation will give them a general conception of them; it must, of course, be borne in mind that what is said above is necessarily very brief and necessarily very general in its terms—it cannot therefore be treated as being of absolutely universal application, but must be taken for what it is, a generalisation.

Having in the introduction indicated the nature of the subject matter to be considered, Pt. II of the report sets out certain general considerations affecting unit trusts, and there is one sentence which it seems very desirable to quote, and which I will quote without any comment. After referring to the large sums now invested in units, we find this sentence: "These results point to the existence of a demand by the investing public which the unit trust movement has supplied, but it is difficult to believe that the sales of units would have attained such large dimensions had it not been for favourable economic circumstances and for the methods of advertisement and salesmanship which the management companies have employed."

Among the advantages claimed for the unit trust is the particular advantage to the small investor that he can spread his risk, and he has also usually an undertaking by the managers to buy back his units at a price calculated by reference to the value of the underlying securities at the time of repurchase. And here the report strikes a warning note; it points out the recovery which has taken place in industrials since 1932, with the consequent benefits which have accrued to most unit holders.

May not the favourable trend of the stock markets in recent years have given to large numbers of small investors an exaggerated idea both of the attractiveness and of the safety of an investment in unit trusts? asks the report. If and when activity gives place to depression the capital value of the income per unit is bound to decline—even without using such an ugly word as depression it must be obvious to even the most confirmed optimist that, in accordance with the fluctuations of trade cycles, there must be periods when capital and income fall back, just as there are periods when they advance.

A spread of investment does not protect one against the bottom of the trade cycle, and it may be remembered that, whereas the holder of shares in an investment trust usually has something to soften the blow in the shape of a reserve built up during times of prosperity, this cushion is denied to the unit holder. "We think it important to emphasise," runs the report, "that the security of a unit, in capital or income, can be no greater than that of the underlying securities which are held against the unit; and in so far as these underlying securities consist of the ordinary shares of industrial companies, fluctuations both in capital value and in income are inevitable. We are far from satisfied that this point is fully appreciated by the great mass of small investors when they buy units. On the contrary, we have had evidence that some unit holders are under a misapprehension as to the security that their units really possess. The possibility of misunderstanding upon this vital point is increased by much of the advertisement by which the sale of units has been fostered."

(*To be continued.*)

A Conveyancer's Diary.

[CONTRIBUTED.]

Trustees Consulting their Beneficiaries.

THE prudent trustee, no doubt, always takes reasonable steps to keep on amicable terms with his beneficiaries, and in pursuit of this laudable object will keep them informed of his proceedings and ascertain their wishes. He will remember that he will one day be called to account, and will do all he can to make sure that there is no cause for complaint against him. Such is the duty of prudence; there is also in some cases a statutory obligation, which it will be desirable to examine.

By the Law of Property Amendment Act, 1926, the following new sub-section was introduced in lieu of a rather less complicated one to much the same effect in the 1925 Act. The new sub-section is now printed as sub-s. (3) of s. 26 of the Law of Property Act, 1925. It provides: "Trustees for sale shall so far as practicable consult the persons of full age for the time being beneficially interested in possession in the rents and profits of the land until sale, and shall, so far as consistent with the general interest of the trust, give effect to the wishes of such persons, or, in the case of dispute, of the majority (according to the value of their combined interests) of such persons, but a purchaser shall not be concerned to see that the provisions of this sub-section have been complied with.

"In the case of a trust for sale, not being a trust for sale created by or in pursuance of the powers conferred by this or any other Act, this sub-section shall not apply unless the contrary intention appears in the disposition creating the trust."

Now, the first question on the construction of this provision is what the second paragraph means. The fact that no corresponding sentence appeared in the Law of Property Act, 1925, suggests that this matter is of some importance. Under the original provision it was reasonably clear that the operative part of the sub-section applied at least to all trusts for sale of land, and conceivably to all trusts for sale whatever. The second paragraph, as the sub-section now stands, apparently cuts down its operation. The provision is that the sub-section shall not apply to trusts for sale not created by or under Acts of Parliament "unless the contrary intention appears in the disposition creating the trust." Now I confess that I had always thought that this sentence was one designed to negative provisions in instruments declaring that the trustees might act regardless of the wishes of beneficiaries. I had taken the words "the contrary intention" as referring to an intention contrary to the main intention of the sub-section, that is to say, contrary to the intention to create a general statutory right of being consulted. In effect, I had believed that this sub-section always applied to trusts for sale of land. I observe, however, in a well-known text-book which I consulted that the learned author believes that the position is quite different, and that the sub-section only applies to trusts for sale created by instruments if the instrument expresses an intention that it shall apply. In other words he reads the phrase "the contrary intention" as referring to an intention contrary to the intention expressed in the immediately preceding words, that the sub-section shall *not apply*. We seem, in fact, to have come upon another obscurity in the new law of property. On the whole, however, I think that it is probably correct that the sub-section only applies to trusts for sale created by an instrument if the instrument says that it is to do so. The reason for this view is that the paragraph was inserted in 1926 for some purpose, and if we do not interpret it thus it will really effect nothing in this direction that the old sub-section did not effect.

This view is a great deal more convenient than the other, for it severely limits the scope of the sub-section, as, if it is right, it is difficult to see to what trusts for sale the provision can apply, except the *ad hoc* trust for sale of s. 2 (2) of the Act, the various "statutory trusts," and the trust for sale vested in personal representatives. If it applied to all trusts for sale, trustees for sale would often be found to have forgotten about it. Further, it appears only to apply to trusts for sale of land: that seems to be the meaning that is to be drawn from the use of the words "the persons of full age for the time being interested in the rents and profits of the land until sale" in the first paragraph. Where a personal representative has no land, or where a trustee for sale once had land but it has all been sold, the sub-section would seem to be inapplicable. On the other hand, if the trustees for sale have used their life-tenant powers to invest the proceeds of sale in other land, the sub-section presumably comes into play again.

I would suggest that the true view of the sub-section is this: it is principally designed to deal with undivided shares. The Acts dealt rudely enough with the owners of undivided shares in land: a man might be entitled to a full legal estate in an undivided share at the end of 1925, perhaps even being an absolute owner, or a tenant for life under the old Settled Land Acts, with all the powers of that position. He would find himself on the first day of 1926 the owner of a mere equity in proceeds of sale, the legal estate, and the *prima facie* governance of the land, being in someone else as statutory trustee for sale. Statutory trustees might be almost anybody, and under the general law would have no duty to take the substantial owners into their confidence in their dealings with the land. Prudence or courtesy would normally, of course, govern their attitude, but such considerations would be broken reeds in a case where there was trouble of any kind. This sub-section was passed as a kind of bridge to keep the ousted undivided owner in touch with the estate. This view has at least some plausibility, and is supported by observations of Maugham, J., in *Re Warren* [1932] 1 Ch. 42, and *Re Davies* [1932] 1 Ch. 530.

The sub-section, then, applies to trusts for sale of land created by or in pursuance of statutes, and to other trusts

for sale if the instrument creating the trust says that it is to do so. What does it do? It creates a right to be consulted and a right to be listened to. It does not create a right in the trustees to exceed the powers given them apart from it; a departure from their proper duties still needs in all cases an additional powers deed entered into by all the beneficiaries, or the sanction of the court under the Trustee Act. The right to be consulted extends only to persons interested in possession. But it is not limited to life tenants or absolute owners; annuitants entitled in possession must be consulted: *Re House* [1929] 2 Ch. 166. The right extends to every exercise of the powers and trusts of the trustees; it is not limited to the exercise of the trust to sell: *Re Jones* [1931] 1 Ch. 375. It is only a right for the beneficiaries in possession to be consulted "so far as practicable"; it is not a right to be consulted in all circumstances. For instance, it would be difficult to say that a trustee is bound to waste time and money in consulting a beneficiary who is abroad. The right to be listened to is only one "so far as consistent with the general interest of the trust"; therefore no trustee will be bound to damnify capital at the behest of the persons in possession who are the persons to be consulted. Indeed, here as always, he must hold the scales evenly. But within the area of things that are consistent with the general interest of the trust he should do his best to fall in with the wishes of the majority in value of the persons in possession. It is submitted that if he does so he will have a very strong case if things go wrong and he comes later to ask (under s. 62 of the Trustee Act) for indemnity out of the interests of the persons supporting the line of action adopted, as he will have adopted it at their "request."

As we have seen, then, the section has a compass a great deal more narrow than it would seem to have at first sight; within that compass it extends so far as practicable to every exercise of the powers and trusts of the trustee for sale. It should never be out of the mind of statutory trustees for sale of land and persons in a comparable position. But though it must not be forgotten it is not unduly exacting in serious matters, for it does little more than give a statutory force to the rules which a wise trustee will in any case impose upon himself.

Landlord and Tenant Notebook.

Effects of the Housing Acts.—I. The Commencement of the Tenancy.

THE Housing Act, 1935, and the unrepealed parts of the Acts of 1925 and 1930, are not in the main concerned with the relationship of landlord and tenant. But scattered among and about them are several provisions which impose obligations on landlords and tenants regardless of contract. I propose to discuss the effect of these from a landlord-and-tenant point of view; not in the order in which they appear in the statutes, but in the order in which attention to their effect is necessary in the course of a tenancy.

Provisions demanding consideration before and at the time of granting a tenancy are those which concern fitness of premises, overcrowding, and information to be given to tenants.

Fitness of Premises.—A landlord letting a dwelling-house for habitation at a rent not exceeding £26 annually outside, or £40 annually within, the County of London, is under an obligation, in the nature of a condition, to see that the premises are in all respects fit for human habitation. There is an exception in the case of a grant for not less than three years, under which the tenant agrees to put the premises into a condition reasonably fit for habitation (1925 Act, s. 1 (1)).

The scope of this provision is defined solely by reference to rental and nature of intended user. Other provisions which will be dealt with apply or do not apply according as premises are or are not meant for the working class, and in some cases rental and status are immaterial; but this condition as to fitness is imported into the tenancy agreement if the rent is at the specified limit, regardless of the class to which the tenant belongs.

When are premises "in all respects reasonably fit for human habitation"? According to *Jones* v. *Geen* [1925] 1 K.B. 659, the standard is "a humble one," and lower than that indicated by the expression "good and tenantable repair"; according to one *obiter dictum* in *Morgan* v. *Liverpool Corporation* [1927] 2 K.B. 131, C.A., it demands that window sashcords be not broken, but according to two others it demands nothing so good. So on this point landlords have as yet no adequate guidance.

Overcrowding.—Provisions which will shortly come into force in most places make landlords and occupiers of dwelling-houses liable to penalties if they cause or permit overcrowding. The penalties are a fine not exceeding £5, and a further fine of £2 per day after conviction (1935 Act, s. 3 (1)).

To ascertain the exact nature and extent of the new obligation it is necessary to enquire into the meanings of a number of expressions: "dwelling-house," "working class," "person," "cause or permit."

A "dwelling-house" is premises used as a separate dwelling by members of the working classes or of a type suitable for such use (1935 Act, s. 12).

The expression "working class" is not defined. Class distinction is, of course, exceptional in our law; Confirmation of Magna Carta, 1297, and the Profane Oaths Act, 1745, are, or are among, the other exceptions. Some sort of description of what is intended by "working class" is to be found among the provisions for compulsory acquisition of property for re-housing in the 1925 Act. That statute, repeating an older enactment, says that the expression (for that purpose) is to include persons who can roughly be arranged into three groups: wage-earners, people working "on their own," and people whose income does not exceed £3 a week. Domestic servants are expressly excluded; whether this is intended as a compliment or not, *quaere* (1925 Act, Sched. V (12) (*e*)).

And note that the offence may be committed by causing or permitting overcrowding of houses of a type suitable for use by members of the working class; actual user by such is not essential.

Overcrowding is a matter of area, and of number and sex of persons, and attention should first be directed to the meaning of "person." It will be seen that for these purposes no one counts till he is one year old—*de minimis non curat lex*, as it were; and when he attains that age he is half a person only until the age of ten (1935 Act, s. 2 (2)).

Having enquired the number, ages and sexes of prospective occupiers, the landlord should set about ascertaining the capacity of the house or flat. His simplest course is to make an application to the local authority (1935 Act, s. 6 (2)), for ascertainment involves much mensuration and calculation. All rooms which have a floor area of not less than 50 square feet are to be counted and measured provided they are not of a type not normally used in the locality as living rooms or bedrooms (1935 Act, s. 12). The landlord must refuse to let if he has reasonable cause to suppose that more than two persons will be sleeping in a one-roomed dwelling, more than three in two rooms, five in three rooms, seven and a half in four, ten in five, adding two persons for each room in excess of five. He must also refuse to let if he has reasonable cause to suppose that more than one and a half persons will be sleeping in a room of which the area of the floor is under 110 square feet, more than one person if that area be under 90 square feet, more than half a person if under 70 square feet. Thirdly, he must refuse to let if he has reasonable cause to suppose that any two persons over ten years old of opposite sexes not living together as husband

and wife will have to sleep in the same room (1935 Act, s. 2 (1), and Sched. I).

The nature of the landlord's obligation, as well as that of the occupier, is defined by the expression "cause and permit." Having regard to an explanatory sub-section, and to Atkin, L.J.'s, judgment in *Berton* v. *Alliance Economic Investment Co.* [1922] 1 K.B. 742, C.A., when the learned lord justice said "'permit' means one of two things, either to give leave for an act which without that leave could not be legally done, or to abstain from taking steps to prevent the act where it is within a man's power to prevent it," the word "cause" might well have been omitted, for it is enacted that the offence is committed if when letting a house either the landlord or his agent has reasonable cause to believe that it will become overcrowded, or if he fails to make enquiries of the proposed occupier as to the number, age and sex of the persons who will be allowed to sleep in the house (1935 Act, s. 3 (5) (*b*)).

On the question of what is a "separate" dwelling it may be useful to refer to *Smith* v. *Prime* [1923] W.N. 131, which turned on "conversion into separate and self-contained flats" in the Increase of Rent, etc., Act, 1920, s. 12 (9). It was held in that case that the presence of a partition was not conclusive on this point.

Information.—Tenancies of premises affected by these Acts are rarely evidenced by written agreements. The nearest approach to a document of title is a "rent book." In this, where premises are intended or used for occupation by members of the working class, the names and addresses of the responsible landlord and of the local medical officer of health must be inscribed. When there is no such book, the two names and addresses must be "delivered" to the tenant in writing before any rent is demanded or collected. The maximum penalty for collecting or demanding rent while the default continues is forty shillings (1925 Act, s. 5, as amended by the 1935 Act).

When the provisions relating to overcrowding come into force, every rent-book "or similar document" will have to contain a summary of those provisions which define overcrowding, penalise overcrowding, and permit of temporary overcrowding, the maximum penalty for using such document without the summary being £10 (1935, s. 6 (1)).

While on the subject, it may be mentioned that nowadays, apart from the Housing Acts, the rent book or similar document may have to contain further statements of law and fact; a statement of the amount of rates, when these are collected by the landlord, may be obligatory under the Statement of Rates Act, 1919; and if the premises are controlled, a large amount of reading matter has to be supplied by virtue of the Rent, etc., Act, 1933 (see regulations made under s. 14).

Our County Court Letter.

THE REMUNERATION OF SOLICITORS.

In *Stokes* v. *Newill*, recently heard at Wellington County Court, the claim was for £28 12s., being the expenses incurred by the plaintiff in engaging a London firm of solicitors to recover from the defendant certain documents. These related to an action brought against the London Midland and Scottish Railway Company in 1932 by the plaintiff, in which the above defendant had acted as his solicitor. The plaintiff had been unsuccessful in that action, and certain documents were handed over, at his request, by the defendant. Having been referred to the defendant's London agents for the remainder of the documents (viz., fifteen items in a schedule, four letters and a brief) the plaintiff contended that the above amount represented the costs incurred in recovering such documents. The defendant's case was that he had never refused to hand over any papers, but the defendant had been unable to specify what he required. His Honour Judge Samuel, K.C., observed that the managing clerk of the plaintiff's London solicitors had given evidence as to the above fifteen items. Only a small part of the expenditure (viz., two items of 3s. 6d. each) specifically applied to the question of securing documents, and a large proportion was incurred in respect of other work. Judgment was given for the defendant, with costs.

THE CONTRACTS OF DOMESTIC SERVANTS.

The above subject has been considered in two recent cases. In *Norton* v. *Craig*, at Liverpool County Court, the claim was for 12s. as damages for breach of contract. The plaintiff's case was that the action was not brought to recover 12s. but because the defendant had left so inconsiderately. She had been employed as a maid since October, 1935, and on the 16th June, 1936, she told the plaintiff that she was leaving next morning, and refused his request to wait until the next day, when his wife would have returned home. Another maid was therefore engaged, to whom the plaintiff paid 30s. a week. The defendant's wages were 18s. a week, and the amount claimed was the difference between 18s. and 30s. in respect of the week during which the defendant should have been working out her notice. The defendant's case was that the plaintiff was never satisfied with her work, and he gave her notice by telling her to "get out by nine next morning." His Honour Judge Procter gave judgment for the plaintiff.

In *Darell* v. *Dyer*, at Gloucester County Court, the plaintiff's case was that he had employed the defendant as a footman, as from the 23rd April, 1935, at a salary of £40 a year plus an allowance for uniform and clothes. On the 12th June, 1936, the house was full of guests, but the defendant notified his intention of leaving. He was told he could not do so, without the usual month's notice, but the defendant nevertheless left the next day. His Honour Judge Kennedy, K.C., gave judgment for the plaintiff for £3 6s. 8d. and costs. It was announced that the amount, if recovered, would be given to the Gloucestershire Royal Infirmary.

LIABILITY FOR LEAKAGE OF ELECTRICITY.

In *Jones* v. *Wombwell Racing Greyhound Stadium Ltd.*, recently heard at Barnsley County Court, the claim was for £50 as damages for negligence. The plaintiff's case was that, on the 16th March, 1935, he had put his hand on an electric standard at the track, and had received a shock which threw him to the ground. An electrician had previously placed a ladder against the pole, to keep people away, but, after two or three days, the wire had fallen from the insulator and was rubbing against the steel arm of the pole. The insulation rubber had thus become worn, and, as the cable was bared, the pole became electrified when the lights were on. A fresh length of cable had therefore been put in. A constable's evidence was to the effect that the plaintiff, after placing his palm round the pole, was drawn to it and thrown to the ground. The defence was that the pole was sufficiently earthed, and that any excess rush of current would be taken to earth, as shown by an examination (made on the 1st October) by the electrical engineer to the Mexborough Urban District Council. His Honour Judge Frankland observed that he had previously given judgment for the defendants. A new trial had been ordered, however, to enable the plaintiff to call the electrician on his whereabouts being discovered. A witness for the defendants, who had previously testified that no repairs were done on the 16th March, had since admitted that he was then away from work, and in receipt of workmen's compensation. The result was that the plaintiff was entitled to judgment, with costs.

In consequence of the great increase of the work of the Chartered Surveyors' Institution, the roll of which is now approaching 9,000 members, the council has decided to appoint an additional assistant secretary.

POINTS IN PRACTICE.

Questions from Solicitors who are Registered Annual Subscribers only are answered, and without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the Staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 29-31, Breams Buildings, E.C.4, and contain the name and address of the Subscriber. In matters of urgency answers will be forwarded by post if a stamped addressed envelope is enclosed.

Wife's Right to Indemnity from Husband's Estate.

Q. 3377. Husband and wife are the holders of a joint banking account into which are paid dividends received from securities standing in the wife's name and dividends received from securities standing in the husband's name. The husband has recently died, and at the date of death the account was overdrawn. As between the bank and the widow, there is no doubt that the widow is liable for the amount overdrawn as the survivor on the joint account. The widow, however, claims that she is entitled to be indemnified by the estate of the husband for the amount by which the account was overdrawn, since the overdraft represents moneys expended on the husband's hospital and doctors' accounts during his last illness. We shall be obliged if you will advise us whether, in your opinion, the widow's claim should be allowed against the estate, and if it will be permitted by the Estate Duty Office as a deduction in the Inland Revenue affidavit.

A. The husband was obviously liable for bills for medical attendance, etc., but the wife's difficulty is that, if one person voluntarily discharges the debt of another *without request*, the former has no right to recover the amount from the latter. It is not stated whether the cheques were signed by both parties. If they were, we do not think there would be any question of the wife's right to indemnity. If by arrangement with the bank either party could sign, and in fact the wife signed, then the wife's right would seem to depend on whether there was (*a*) a request by her husband to settle the accounts, or (*b*) the wife could be said to have been constituted the husband's agent by the request to the bank to honour her signature. We can find no direct authority, but on one or other of the above grounds we express the opinion that the wife's claim should be allowed as against the estate and as a deduction for estate duty purposes. The Estate Duty Department may, however, ask what were the terms of the agreement, if any, under which the parties appear to have shared in their necessary expenses.

Intended Assignee let into Possession.

Q. 3378. L is landlord, T tenant and X proposed assignee of a shop. The usual assignment is prepared by T's solicitor and forwarded to X for execution, and X executes the deed and returns it by post, and shortly afterwards takes possession of the shop. Thereafter, for a period of two years, he pays rent quarterly to L. It now appears that the assignment never reached T's solicitor, and as X now wishes to quit the premises :—

(*a*) To whom should he give notice, and what form should such notice take ?

(*b*) Can he exercise the option to determine contained in the lease, or is this only exercisable by T ?

A. As between L and X a question of estoppel may have arisen, though not necessarily so, as L may have regarded X as a sub-tenant paying the rent on T's behalf. There is no question that as between T and X the latter is equitably entitled to have an assignment executed, and it is considered therefore that, as an alternative to the immediate execution of an assignment by T, which would allow X without question to exercise the right of determination, T should concur with X in giving the required notice, T being the legal holder of the lease or tenancy. We should recommend the notice being given in the following form : T, at the request of X, who is entitled in equity to the term granted by the lease dated, etc., and X, if and so far as by estoppel or otherwise he has become entitled to be legally regarded as the lessee, hereby severally give notice, etc. L could hardly find any ground for objecting to such a notice.

Validity of Haulage Service.

Q. 3379. The owner of a car (covered by insurance to carry goods) is the holder of a " C " licence in respect of a vehicle to carry goods for his own purposes. Having *lent the car gratuitously* to A to enable him to carry his own goods, A paying X's driver separately for the work, so that the driver is part-time employed by both X and A, X was refused a " B " licence by the licensing authority in respect of his application for an additional vehicle (to conveniently carry both his own and A's goods) on the ground that sufficient haulage services already exist. The bulk of the goods which X requires are carried " inwardly " and those of A " outwardly." X now proposes to gratuitously *lend* his additional vehicle (not the car) to be used by A, and X will also use it so as to provide the carriage of both their own goods, the vehicle to be driven by a common employee—in the part-time employment of each ; and so get over the difficulty of one owner operating the vehicle for hire or reward. Is this arrangement in order, and will it be a breach of any of the licensing laws or provisions ?

A. The fact that the parties call the arrangement a " loan " of the vehicle does not disguise the circumstance that the arrangement will be mutually profitable, e.g., by saving the expense of larger vehicles for A and X. The arrangement would be a colourable evasion of the licensing regulations, and would be tantamount to running a service, in defiance of the authority's refusal of a licence. The arrangement is not in order, and would therefore be a breach of the licensing regulations.

Damage by Crown Motor Lorry.

Q. 3380. F owns land abutting on a public highway and divided from it by a close-boarded fence. A lorry belonging to X was recently driven along the highway and ran over the grass verge into F's fence doing considerable damage to it. X admits that his lorry was driven into F's fence, but says that it was done so owing to the negligent driving of another lorry belonging to the Crown and driven by its servant Y which cut in and forced X's lorry off the highway. Y was subsequently convicted before the magistrates with driving without due care and attention. F wishes to know whether he can successfully sue X for damages for cost of the repair to his fence or whether his claim will be against the Crown. Please quote authorities. It will be observed that F is not in a position to prove negligence against X unless negligence can be implied from the facts.

A. F should sue both X and Y. The county court judge may not take the same view as the magistrates that Y was to blame : see *Riches* v. *London General Omnibus Co. Ltd.* (1916), 60 Sol. J. 337. Although any judgment obtained against Y will only be against him personally, the Crown may make an *ex gratia* payment on his behalf. Negligence can be implied, on the principle of *Res ipsa loquitur* : see *Ellor* v. *Selfridge & Co. Ltd.* (1930), 46 T.L.R. 236.

To-day and Yesterday.

LEGAL CALENDAR.

19 OCTOBER.—On Saturday, the 19th October, 1839, Lord Brougham was involved in an accident when his carriage overturned during a drive in Westmorland, but he escaped unhurt. Somehow or other, however, a report reached London that he had been killed and almost all the London papers published obituary notices of the prominent ex-Chancellor, few of them favourable, for at the time Brougham was not on the crest of a wave of popularity. When the news came through that he was alive, the ridicule which followed was increased by the suspicion that he had himself been privy to the report of his own decease.

20 OCTOBER.—On the 20th October, 1836, while some workmen were digging out a vault or cellar at No. 9, New Square, Lincoln's Inn, they discovered the skeleton of a man of twenty-five. Medical examination led to the conclusion that it had lain in the ground for more than half a century, but it was impossible to say whether or not the death had been caused by violence. An inquest was held in the Council Chamber of the Inn before a jury of benchers and other legal gentlemen, but no one could suggest any explanation of the presence of the bones.

21 OCTOBER.—John de Verdun was one of the warrior judges who in the morning of our legal history cut with their swords the first rough outline of English justice. Those were the days when, as the late G. K. Chesterton once wrote, "What we call the judge's circuits were rather the King's raids," and de Verdun who had already hammered the Welsh as a Baron Marcher probably lost none of his vigour when he was appointed a Justice Itinerant for Shropshire and Staffordshire in 1260. He died on the 21st October, 1274.

22 OCTOBER.—On the 22nd October, 1888, the Parnell Commission, consisting of Sir James Hannan, Day, J., and A. L. Smith, J., sat for business for the first time at the Law Courts, the Attorney-General opening the proceedings. The object of the setting up of the Commision was to inquire into the accusations made against the great politician that his Irish Land League had promoted and incited a campaign of crimes, outrages, boycotting and intimidation. The main support of the case broke down when the forger Pigott confessed under Sir Charles Russell's cross-examination that he had written certain letters alleged to be by Parnell.

23 OCTOBER.—Lord Eskgrove died at the estate near Inveresk from which he took his title on the 23rd October, 1804. He was a man of great integrity and an able lawyer, but like many of the Scottish judges of his generation, he indulged in eccentricities of manner and speech which often went beyond the bounds of the ludicrous. One critic declared that "the value of all his words and actions consisted in their absurdity." He was a lord of justiciary from 1785 and lord justice clerk from 1799.

24 OCTOBER.—On the 24th October, 1760, Patrick M'Carty was sentenced to death at the Old Bailey for the murder of William Talbot, an officer of the Marshalsea, who had attempted to arrest him for a debt of £4. When he had been accosted, he had taken the officer home with him to the "King's Head," in Drury Lane, under pretence of finding the money for payment, but when they got into the house he suddenly pulled out a knife and stabbed him fatally in the side. Immediately he had run out into the street and reached Clare Market before a soldier with a bayonet stopped him. He was hanged at the bottom of Bow Street, the body being afterwards taken to hang in chains on Finchley Common.

25 OCTOBER.—On the 25th October, 1292, Robert Burnel, Bishop of Bath and Wells, died. He had been Lord Chancellor for eighteen years.

THE WEEK'S PERSONALITY.

Probably no man had so great a share in the planning of the great legislative acts of Edward I as Robert Burnell, his Chancellor, whose appointment marked the beginning of his reforms. The Statute of Westminster I, a code in itself, was passed in 1275, the year after he received the Great Seal, and ten years later he presided over the parliaments which passed the Statute of Westminster II and the Statute of Winchester. It was he who settled the Chancery in London in 1280, as a fixed place to which suitors could always resort to seek a remedy for their grievances. He played a great part in the pacification of Wales and was present at the drawing up of the Statute of Rhuddlan. When the King was startled by the confusion and corruption into which the judicial system had fallen, he was at the head of the commission which inquired into the complaints against the judges, presenting the report in 1290 which led to a wholesale reorganisation of the Bench. He never attained the archbishopric which Edward would have wished for him, because reports had reached the Pope of "certain defects" in his ecclesiastical character, too blatant to be overlooked, for in personal conduct he was not an ideal churchman. But he was a great statesman and a great legislator.

A QUESTION OF LANGUAGE.

The three Welsh Nationalists who were tried but not convicted at the Caernarvon Assizes, on charges arising out of the burning of an R.A.F. aerodrome, pleaded "not guilty" in their native tongue, challenged jurors whom they suspected of not understanding Welsh, and altogether displayed a Celtic enthusiasm worthy of their neighbours beyond the Irish Sea. It was such an enthusiasm that got an Acting District Justice in the West of Ireland into a law report in *The Irish Law Times* a couple of months ago. A man had been charged before him with some offence or other, and a sergeant of the Civic Guard began to give evidence for the prosecution in the Irish language. The solicitor of the accused protested that neither he nor his client understood that tongue, and asked for an interpreter. This the District Justice refused, and the evidence having been concluded, he proceeded to give his decision in Irish. A kindly bystander informed the bewildered prisoner that he had been convicted and sentenced to a term of imprisonment. Fortunately for him, however, the High Court did not think the sentence ought to stand.

THE SPRINGS OF ENTHUSIASM.

Crowds singing patriotic Welsh songs, cheering processions of Nationalists and the chairing of the three accused men were the scenes which marked the disagreement of the jury at the Caernarvon trial. You can never quite foresee what sort of proceedings will gather the throngs. The trials of William Hone, the bookseller, in 1817, on a charge of blasphemy, brought 20,000 to the court to cheer his acquittals, and it was as much as anything Lord Chief Justice Ellenborough's strenuous efforts for a conviction that inspired them. "As soon as the decision was heard, loud and reiterated shouts of applause ensued . . . The expression of feeling was so universal that all interposition was impossible." So, too, the rigour of his judges did much to kindle the bonfires and set going the tremendous popular rejoicings when the turbulent Colonel Lilburne was acquitted of treason under the Commonwealth. Sympathy for an ill-used wife made the Bar cheer in the Irish Common Pleas, and the warm-hearted crowd draw her carriage to her hotel when poor Teresa Longworth scored a temporary legal triumph. But why did a cheering mob outside the Old Bailey make a popular hero of young Wood, an obscure artist, acquitted of the murder of a street-walker ?

Mr. John McDowell, solicitor, of Brook Street, W., left £36,228, with net personalty £16,853.

Notes of Cases.

Court of Appeal.

Collingwood *v.* Home & Colonial Stores Limited.

Lord Wright, M.R., Romer, L.J., and Macnaghten, J.
20th October, 1936.

NUISANCE—PREMISES DAMAGED BY FIRE IN ADJOINING PREMISES—FIRE CAUSED BY FAULT IN ELECTRICAL SUPPLY—NO NEGLIGENCE—LIABILITY OF PERSON BRINGING ELECTRICITY ON TO PREMISES.

Appeal from a decision of Greaves-Lord, J. (80 SOL. J. 167).

The plaintiff was the owner of a shop adjoining one belonging to the defendants which was lighted by electricity. Fire having broken out on the defendants' premises, the plaintiff's shop was damaged in the course of extinguishing it. The fire originated in the defendants' basement, and was connected with the electrical wiring, but there was no proof as to the exact way in which it started. Greaves-Lord, J., gave judgment for the defendants.

LORD WRIGHT, M.R., dismissing the plaintiff's appeal, said that the fire was accidental, and there was no proof of negligence, but the plaintiff had argued that this was a case within *Rylands* v. *Fletcher*, L.R. 3 H.L. 330, relying on *Musgrove* v. *Pandelis* [1919] 2 K.B. 43. His lordship would have followed that decision if the present case had come within the scope of its ruling, but it did not, and *Rylands* v. *Fletcher*, *supra*, did not apply: see *Northwestern Utilities Ltd.* v. *London Guarantee and Accident Co.* [1936] A.C. 108, at p. 119. The principle in that case did not apply to the reasonable and ordinary user of premises: see *Rickards* v. *Lothian* [1913] A.C. 263, at pp. 279 *et seq.* Nothing in the installation of electric wiring brought the case within *Rylands* v. *Fletcher*, *supra*. Electricity, water and gas were all from one point of view dangerous, as illustrated by *Midwood & Co. Ltd.* v. *Manchester Corporation* [1905] 2 K.B. 597; *Charing Cross Electricity Supply Co.* v. *Hydraulic Power Co.* [1914] 3 K.B. 772; and *Northwestern Utilities Ltd.* v. *London Guarantee & Accident Co.*, *supra*, but in those cases there was nothing comparable to the ordinary installation of domestic wiring. In those cases the dangerous thing was being handled in large quantities: see *Northwestern Utilities Ltd.* v. *London Guarantee & Accident Co.*, at p. 118.

ROMER, L.J., and MACNAGHTEN, J., agreed.

COUNSEL: *Samuels*, K.C., and *Paull*; *Trapnell*, K.C., and *Willmer*.

SOLICITORS: *Lucien Fior*; *William Hurd & Son*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Appeals from County Courts.

Smith *v* Kinsey.

Lord Wright, M.R., Romer, L.J., and Macnaghten, J.
14th October, 1936.

LANDLORD AND TENANT—COTTAGE AND GARDEN LET TOGETHER—SEPARATE SALE OF FREEHOLD—SEVERANCE OF REVERSION—RIGHTS OF RE-ENTRY APPORTIONED—NOTICE TO QUIT BY PURCHASER OF GARDEN—WHETHER VALID—LAW OF PROPERTY ACT, 1925 (15 Geo. 5, c. 20), s. 140.

Appeal from Derby County Court.

The owner of five freehold cottages and the gardens thereof died. In 1931 his executors sold them, one of the gardens being sold separately and conveyed to the plaintiff. The defendant was at that time tenant of that garden and the cottage which went with it. By the special conditions of sale, every condition or right of re-entry was apportioned. The defendant having refused to recognise that the plaintiff had any title to the garden and only paid his rent through the person who was the owner of the cottages, the plaintiff, on the 27th September, 1933, served on him notice to quit and deliver up possession "on the 25th day of March, 1934, or at the end of your tenancy, which will expire next after six months from the date of the service of this notice." The defendant having failed to comply with the notice, the plaintiff sued for possession. The learned county court judge dismissed the claim. The plaintiff appealed.

LORD WRIGHT, M.R., allowing the appeal, said that it was not clear that there was anything in the nature of a tenancy at all, but assuming in favour of the defendant that there was a yearly tenancy, the notice to quit provided for every contingency, and could not be bad on the ground of the period of notice. The learned judge, however, had held it bad on the ground that there had been a severance of the reversion and that the owner of one part of the severed reversion could not give a valid notice of re-entry. That was the law stated in *In re Bebington's Tenancy* [1921] 1 Ch. 559, at p. 562, but it was altered by s. 140 (1) and (2) of the Law of Property Act, 1925. Here there was a severance by conveyance, every condition or right of re-entry appertaining to the land was apportioned and the right of re-entry remained annexed to the severed part of the reversionary estate. The plaintiff was entitled to possession, and the notice was good. His lordship observed that s. 140 did not refer to apportionment of rent and said that rent under an entire lease could not be apportioned save by consent of the parties or an order of the court. However, there was no necessity to consider the position as to rent, since no order with reference to it was sought.

ROMER, L.J., and MACNAGHTEN, J., agreed.

COUNSEL: *H. V. Lloyd-Jones*. (The respondent did not appear.)

SOLICITORS: *Boxall & Boxall*, agents for *Robert Pinder & Son*, of Derby.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

C. Christopher (Hove) Ltd. *v.* Williams and Another.

Lord Wright, M.R., Romer, L.J., and Macnaghten, J.
14th October, 1936.

PRACTICE—ACTION FOR PRICE OF GOODS—ALTERNATIVE CLAIMS AGAINST HUSBAND AND WIFE—LEAVE TO SIGN JUDGMENT AGAINST WIFE—EFFECT—WHETHER AN ELECTION.

Appeal from Brighton County Court.

The plaintiffs brought an action against the two defendants, who were husband and wife, to recover the price of clothes supplied to the latter. In May, 1936, the plaintiffs took out a summons under R.S.C. Order XIV for leave to sign judgment against both defendants. On the 8th May, an order was made that they should be at liberty to sign final judgment against the wife and that the summons so far as regarded the husband should be adjourned till the 12th May, on which day he obtained leave to defend. The plaintiff did not in fact sign judgment against the wife. At the trial the learned judge held that at the time of the supply of the goods the husband had not revoked his authority to his wife to pledge his credit in matters of that sort, although prior thereto she had committed adultery. Judgment was given against the husband, who appealed.

LORD WRIGHT, M.R., dismissing the appeal, said that it had been argued that the judgment was wrong because the liability of the husband and wife was alternative and not joint (*Morel Brothers & Co. Ltd.* v. *Earl of Westmorland* [1904] A.C. 11), and that there could not be a second judgment against a defendant whose liability was alternative. It had been argued that the order giving the plaintiffs leave to sign final judgment against the wife had the same effect as if the judgment had been actually signed. This, however, was contrary to *In re Gurney* [1896] 2 Ch. 863, at p. 864. It had also been argued that the fact of obtaining the leave to sign final judgment constituted a conclusive election to charge the wife to the exclusion of the husband. But that was an issue

of fact, and there was no finding of fact by the judge that there had been an election. It would require strong evidence to satisfy the court that a plaintiff had conclusively elected to release one possible defendant by anything short of an actual signing of judgment. In the present case the plaintiffs got liberty to sign judgment against one defendant, but did not exercise it, and the very order that gave them liberty went on to give them the right of proceeding with their claim against the other defendant.

ROMER, L.J., and MACNAGHTEN, J., agreed.

COUNSEL: *A. J. Wrottesley* (*C. J. Pensotti* with him); *P. T. Miller* (*Geoffrey Lawrence* with him).

SOLICITORS: *Gordon Gardiner, Carpenter & Co.*, agents for *F. H. Carpenter & Veale*, of Brighton; *Routh, Stacey & Castle*, agents for *John C. Bosley & Legg*, of Brighton.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Kearns *v.* Gee, Walker & Slater Ltd.

Slesser and Scott, L.JJ., and Eve, J. 15th October, 1936.

WORK AND LABOUR—BUILDING—INJURY TO WORKMAN BY FALLING BRICKS—EMPLOYERS' BREACH OF STATUTORY REGULATIONS—BUILDING REGULATIONS, 1926 (S.R. & O. 1926, No. 738).

Appeal from Westminster County Court.

A workman employed by the company in the rebuilding of certain premises was working on a scaffolding which had been a day and a half in position, filling up steel construction with brickwork, when he was struck on the head by two or more bricks falling from a wheelbarrow being used on a higher floor by another workman. There was no protection at the point where he was working, and there were no planks on the scaffolding above him, so that if he looked up it was into the sky. He had not before been engaged on that particular wall. The next floor had been concreted and a lot of bricks were stacked on it. The method was for the bricks to be hoisted in skips by an electric crane and then loaded into barrows. The workman, having brought an action against the company alleging negligence and claiming damages, the defence of common employment was set up. The plaintiff replied alleging a breach of para. 31 of the Building Regulations, 1926, which required that "any part of the premises in which any person is habitually employed shall be covered in such a manner as to protect any person who is working in that part from being struck by any falling material or article." The learned county court judge dismissed the action.

SLESSER, L.J., allowing the plaintiff's appeal, said that the regulation was made applicable to "all premises on which machinery worked by steam, water or other mechanical power" was used. It had been argued that the present case was not within these words as the crane used was worked by electricity, because, it was said, "other mechanical power" must be interpreted according to the *ejusdem generis* rule. But a machine worked by electricity was just as much worked by mechanical power as if by steam or water. As to para. 31, it applied to those parts of premises which it was necessary to keep covered against accidents. It could not be said, on the evidence, that the persons who worked there were not habitually employed there or that the place where the accident happened was not a place where any person was habitually employed. The judge was wrong in asking himself whether the plaintiff was habitually employed there. The person working in that particular part need not himself be the person habitually employed there.

SCOTT, L.J., and EVE, J., agreed.

COUNSEL: *Pugh; Beney.*

SOLICITORS: *W. H. Thompson; Barlow, Lyde & Gilbert.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

High Court—King's Bench Division.

Ritz Cleaners Ltd. *v.* West Middlesex Assessment Committee.

Lord Hewart, C.J., du Parcq and Goddard, JJ. 15th October, 1936.

RATING AND VALUATION—PREMISES IN STREET—CLOTHES CLEANED AND REPAIRED AT—BROUGHT TO PREMISES BY MEMBERS OF PUBLIC—WHETHER PREMISES PRIMARILY A SHOP OR AN INDUSTRIAL HEREDITAMENT—RATING AND VALUATION (APPORTIONMENT) ACT, 1928 (18 & 19 Geo. 5, c. 44), ss. 3, 4.

Appeal by case stated from a decision of the Rating Appeals Committee for Middlesex.

The respondent company were cleaners and dyers, and occupied premises situated in a street and having the external appearance of a shop. They occupied the hereditament for cleaning or repairing garments left for cleaning, and to a small extent for dyeing. Nearly all the articles received by them were dealt with on the premises. The respondents dealt direct with members of the public. About one-third of the articles cleaned were brought to the premises by the public, and others were collected by the respondents' vanmen. In the room facing the street there was a Burtol plant for cleaning and dyeing articles. In other rooms the cleaning, pressing, and packing of the goods was carried out. The hereditament was registered as a factory under the Factory and Workshops Act, 1901. It was contended for the respondents that their premises were an industrial hereditament within the meaning of s. 3 (1) of the Rating and Valuation (Apportionment) Act, 1928; that they were occupied and used primarily for industrial purposes, and partly for non-industrial purposes; that an apportionment of the net annual value should be made under s. 4 of the Act of 1928; and that they were not primarily used as a shop. The appellants contended that the work carried on was repair work, that the premises were a retail shop as defined by s. 3 (4) of the Act of 1928, and that they were not an industrial hereditament. The Appeal Committee held that the premises were an industrial hereditament, but partly a retail shop. Therefore, the net annual value of £97 was apportioned on the basis of finding that £59 was for industrial purposes and £38 for non-industrial purposes. The Assessment Committee appealed.

LORD HEWART, C.J., said that, having considered all the facts, the Committee had decided that the premises were primarily used for industrial purposes. No doubt there were difficulties in the case. In the infinite variety of human circumstances and businesses, it happened that phrases had been used, such as "the public physically resorting thereto" as forming one of the circumstances to be considered in determining whether premises were a retail shop. But nothing could be more fallacious than to draw the inference that any premises to which the public resorted must be a retail shop. Similarly, if the true view were that premises really were a retail shop, repair work could be carried on there without destroying its character as such. The only course open to the Committee in dealing with the case was first to understand the long series of decisions on the subject, and then to apply them to the facts. There was no reason to think that the Committee had misdirected themselves in coming to the conclusion that these premises were not primarily a retail shop. The appeal failed.

DU PARCQ and GODDARD, JJ., agreed.

COUNSEL: *Comyns Carr*, K.C., and *Scott Henderson*, for the appellants; *Trapnell*, K.C., and *W. G. H. Cook*, for the respondents.

SOLICITORS: *H. G. Greenwood; Ellis & Fairbairn.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Mr. Norman Birkett, K.C., has accepted the office of Master of the Curriers' Company, consequent on the withdrawal of Mr. James Kemp, who was originally elected.

Cole *v.* Police Constable 443a.

Lord Hewart, C.J., du Parcq and Goddard, JJ.
13th and 14th October, 1936.

Ecclesiastical Law—Westminster Abbey—Right of Dean and Chapter to Exclude Members of Public from.

Appeal by case stated against a decision of a magistrate.

The appellant, Cole, had been granted by the Dean and Chapter of Westminster Abbey a permit to act as a guide to the Abbey. The permit having expired in 1932, and the appellant's application for renewal having been refused, the Dean gave instructions that the appellant was to be excluded from the Abbey. On the 12th December, 1935, the appellant was in the Abbey wearing a badge containing the words "Cole's Sightseeing Tours, Guide." The respondent and another constable ejected him without unnecessary violence after having asked him to leave. There was no misconduct by the appellant before the ejectment. Letters patent dated the 21st May, 1560, were produced in evidence, under which, it was contended, the Abbey was handed over to the Dean and Chapter with all its ancient privileges. It was argued for the respondent that therefore to the Dean "belongs the government of the whole college and all its parts," which words appeared in contemporary statutes made by the Sovereign in pursuance of the letters patent. It was contended for the appellant that the Abbey was a public church, and that the Dean had no authority to make an order excluding him from the Abbey. The magistrate held that the right to attend Divine Service in a church was limited to those who had by statute the duty to attend Divine Service. By the statute 5 & 6 Edw. VI, c. 1, the duty to attend service within a parish church was only on parishioners, and the appellant was not a parishioner of the Abbey. The magistrate accordingly decided that the Dean and Chapter acted within their powers in causing the appellant to be excluded. It was argued for the appellant at the present hearing that Westminster Abbey was neither a parish church nor a cathedral, but a Royal Peculiar. A rule, if there were one, that only parishioners were entitled to be present in a church during service could not apply to a church having no parishioners. Any member of the public was entitled to be present during Divine Service, if he behaved himself. The fact that he chose to wear a certain badge was immaterial.

Lord Hewart, C.J., said that, in finding that there was no misconduct, the magistrate was clearly drawing a distinction between actual misconduct such as brawling, and the wearing of a badge by the appellant and his offering his services as a guide. At no time had the appellant said that, although he went in as a guide, he meant to remain as a devout worshipper. What he said was that, though he was wearing a badge, he could not be excluded because he might have been there as a worshipper. He (his lordship) was absolutely satisfied that the Abbey was a Royal Peculiar and that the Dean was entitled to exclude the appellant. The appeal must be dismissed.

du Parcq, J., said that, in his opinion, the case raised a question of public importance. His view differed from that of the Lord Chief Justice, although he (du Parcq, J.) agreed in the result. The Dean had ordered that the appellant was to be excluded from the Abbey, which presumably meant at all times and whether or not the appellant was acting as a guide. It was not contended that the appellant was excluded because he was wearing the badge, nor was it found that he was ever asked to remove it. He (his lordship) would find difficulty in saying that the wearing of the badge of itself was conduct justifying exclusion. He therefore found it necessary to the decision of the case to consider the wider question. On that he was in agreement with the Lord Chief Justice. Just as persons who were not parishioners had no right to enter an ordinary parish church, so it was impossible to maintain the more difficult proposition that such persons had a right to enter a Royal Peculiar.

Goddard, J., agreed with du Parcq, J.

Counsel: *Basil Blagden*, for the appellant; *Monckton*, K.C., and *G. G. Raphael*, for the respondent.

Solicitors: *E. Gordon Lawrence; Solicitor to the Metropolitan Police.*

[Reported by R. C. Calburn, Esq., Barrister-at-Law.]

Olsen *v.* Corry and Gravesend Aviation Ltd.

Greaves-Lord, J. 19th October, 1936.

Negligence—Apprentice—Injury to—Negligence of Employers and Fellow Employee—Common Employment—Liability.

Action for damages for personal injuries.

The plaintiff, aged eighteen, was an apprentice to the defendant company. In May, 1935, the plaintiff was swinging the propeller of an aeroplane piloted by the defendant Corry, when his arm was struck by the propeller and so seriously injured that it had subsequently to be amputated. Greaves-Lord, J., having found negligence on the part of both defendants, and having assessed the damages at £5,000, reserved his decision of the question whether the defendant company were exempted from liability by virtue of the terms of the deed of apprenticeship between themselves and the plaintiff.

Greaves-Lord, J., said that, although the deed of apprenticeship purported to relieve the defendant company in respect of negligence, even though they failed in their duty, the deed was so wide in the extent that it purported to relieve them that it was not for the benefit of the plaintiff and was therefore void. In his opinion, the doctrine of common employment did not apply, and the defendant company could not delegate to their servants their duty to provide a proper system of tuition. Their fundamental breach of duty was the failure to perform their own definite work of devising and supervising a system which would preclude the possibility of danger at the aerodrome. Both defences failed and there must be judgment for the plaintiff for £5,000 against both defendants, with costs.

Counsel: *Cartwright Sharp*, K.C., and *A. Jackson*, for the plaintiff; *T. Carthew*, K.C., and *C. N. Shawcross*, for the defendant Corry; *E. Holroyd Pearce*, for the defendant company.

Solicitors: *J. Howard Smith; Beaumont & Son; William Charles Crocker.*

[Reported by R. C. Calburn, Esq., Barrister-at-Law.]

Warner Bros. Pictures Incorporated *v.* Nelson.

Branson, J. 14th, 15th, 16th and 19th October, 1936.

Contract — Film Actress — Breach by — Negative Covenants—Extent to which Court will Enforce—Injunction—Circumstances in which Granted.

Action for a declaration as to the validity of a contract, and for an injunction.

The plaintiffs were a firm of film producers in the U.S.A. The defendant was a film actress, professionally known as Bette Davis, who had entered into a contract with the plaintiffs which was for fifty-two weeks, and contained options to the plaintiffs to extend it for further periods of fifty-two weeks at ever-increasing amounts of salary to the defendant. It was a stringent contract, under which the defendant agreed "to render her exclusive services as a motion picture and/or legitimate stage actress" to the plaintiffs. She also agreed that she would not, during the term of the contract, render any services for or in any other photographic, stage, or motion picture production or productions, or business of any other person or engage in any other occupation without the written consent of the producer being first obtained. In June, 1936, the defendant declined to be further bound by the agreement,

left the United States, and in September entered into an agreement in this country with a third person. The plaintiffs accordingly brought this action, claiming a declaration that the contract was valid and binding, an injunction to restrain the defendant from acting in breach of it, and damages. *Cur adv. vult.*

BRANSON, J., said that it had been contended for the defendant that no injunction could, as a matter of law, be granted in the circumstances of the case. It was urged that the contract was unlawful as being in restraint of trade because it compelled the defendant to serve the plaintiffs exclusively, and might in certain circumstances endure for the whole of her natural life. No authority had been cited in support of the proposition that such a contract was illegal, and he (his lordship) saw no reason for so holding. Where, as here, the covenants were all concerned with what was to happen while the defendant was employed by the plaintiffs, there was no room for the application of the doctrine of restraint of trade. It was conceded that our courts would not enforce a positive covenant of personal service, and specific performance of the positive covenants by the defendant to serve the plaintiffs was not asked for. The practice of the Court of Chancery in relation to the enforcement of negative covenants was stated in *Doherty* v. *Allman* (1878), 3 A.C. 709, at p. 719, by Lord Cairns. The same principle there had been applied to a contract of personal service by Lord St. Leonards in *Lumley* v. *Wagner* (1852), 1 De G. M. and G., 604. A passage at p. 619 was cited as a correct statement of the law in *Lord Strathcona Steamship Co.* v. *Dominion Coal Co.* [1926] A.C., 108, at p. 125. The mere fact that a covenant which the court would not enforce, if expressed in positive form, was expressed in the negative instead, would not induce the court to enforce it: *Davis* v. *Foreman* [1894] 3 Ch., 654; *Kirchner* v. *Gruban* [1909] 1 Ch. 413, and *Chapman* v. *Westerby* [1913] W.N. 277. Where a contract of personal service contained negative covenants, the enforcement of which would not amount either to a decree of specific performance of the positive covenants of the contract or to the giving of a decree under which the defendant must either remain idle or perform those positive covenants, the court would enforce those negative covenants. The court, in granting an injunction, might, however, limit it to what it considered reasonable in the circumstances. (See Court of Appeal in *William Robinson & Co. Ltd.* v. *Heuer* [1898] 2 Ch. 451.) In that case the court severed the covenants and granted an injunction framed so as to give a reasonable protection to the plaintiffs and no more. He (his lordship) did not agree that that case was no longer the law, or that *Attwood* v. *Lamont* [1920] 3 K.B. 571, had decided that no such severance was permissible. It would be impossible to grant an injunction covering all the negative covenants in the contract. But that objection was removed by the restricted form in which the injunction was sought. The defendant would not be driven, although she might be tempted, to perform the contract. That temptation was no objection to the grant of an injunction. See the judgment of Lord St. Leonards in *Lumley* v. *Wagner*, *supra*. The court would grant an injunction to restrain the defendant for three years from the 19th October, 1936, or during the currency of the contract, whichever period should be the shorter, from rendering within the jurisdiction of that honourable court and without the written consent of the plaintiffs first had and obtained any services for or in any motion picture or stage production or productions of any person, firm, or corporation other than the plaintiffs.

COUNSEL: *Sir Patrick Hastings*, K.C., *Norman Birkett*, K.C., and *Frank Gahan*, for the plaintiffs; *Sir William Jowitt*, K.C., *J. D. Cassels*, K.C., and *J. L. S. Hale*, for the defendant; *Gerald Gardiner* and *Harold J. Brown* held watching briefs for Toeplitz Productions, Limited.

SOLICITORS: *Denton, Hall & Burgin: Munton, Morris, King & Co.; J. D. Langton & Passmore.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Brooks *v.* **Jefferies.**

Lord Hewart, C.J., Branson and du Parcq, JJ.
20th October, 1936.

ROAD TRAFFIC—TRAFFIC SIGN—"HALT AT MAJOR ROAD AHEAD"—CORRECT PLACE TO STOP—ROAD TRAFFIC ACT, 1930 (20 & 21 Geo. 5, c. 43), s. 49.

Appeal by case stated from a decision of Swindon Justices.

An information was preferred by the appellant charging the respondent, Jefferies, under s. 49 of the Road Traffic Act, 1930, with unlawfully failing to conform to the indication given by a certain traffic sign. At the hearing of the information the following facts were proved or admitted:—On the 13th February, 1936, the respondent was driving a motor car at Stratton Saint Margaret, Wilts, towards a cross-roads. He was on a minor road. Twenty yards before the actual junction of the minor road with the major road ahead a sign was erected on the near side of the minor road, which read: "Halt at major road ahead." The word "Halt" was in large letters fitted with reflecting lenses. The remaining words of the sign were in very much smaller letters, and were not fitted with reflecting lenses. It was dark at the time, but the respondent had previously passed the sign by daylight. The only word on the sign which the respondent could reasonably see in the existing conditions was the illuminated word "Halt," and that was the indication which he received. He duly stopped his car near the sign and then proceeded slowly and cautiously. A police officer standing near the cross-roads saw the respondent enter the major road and turn to the right along it. It was contended for the appellant that the respondent had not stopped his car at the major road itself, whereas the indication given to him by the sign was that he should stop his car at that point and not at a point before the actual intersection of the major and the minor roads. It was contended for the respondent that the only indication given to him by the sign was the word "Halt," and that he had complied with that indication. The justices held that the respondent had complied with the indication which he had received from the sign, and that he was not guilty of the offence with which he was charged.

LORD HEWART C.J., said that the case was too plain for argument. The justices had not found that the sign was erected in a way which did not comply with the statutory authorisation. The justices had found that the respondent had omitted to do something which he was told to do, and had done something which he was not told to do, and that therefore he ought to be acquitted. The respondent had admitted having on a previous occasion passed the sign in daylight. In his (his lordship's) opinion there was nothing at all in the case, and it ought to go back to the justices with a direction to them to find that the offence charged was proved.

BRANSON and DU PARCQ, JJ., agreed.

COUNSEL: *J. T. Molony*, for the appellant; *Laurence Vine*, for the respondent.

SOLICITORS: *Watson, Sons and Room*; *Amery-Parkes & Co.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Cafferata *v.* **Wilson; Reeve** *v.* **Same.**

Lord Hewart, C.J., Branson and du Parcq, JJ.
20th October, 1936.

FIREARMS—SALE WITHOUT LICENCE OF DUMMY REVOLVER CAPABLE OF BEING MADE TO FIRE BULLETS—WHETHER AN OFFENCE—FIREARMS ACT, 1920 (10 & 11 Geo. 5, c. 43), s. 20.

Appeal by case stated from a decision of the stipendiary magistrate for Liverpool.

Informations were preferred under s. 2 (1) of the Firearms Act, 1920, charging the appellant, Cafferata, with having, on the 23rd November, 1935, sold a certain firearm—namely, a revolver—when not registered as a firearms dealer under that Act; and charging the appellant, Reeve, with aiding and

abetting Cafferata in the sale. At the material dates Cafferata conducted a general shop at Prescot Road, Liverpool, and was not registered as a firearms dealer. On the 23rd November, 1935, he sold to one, Thompson, a dummy revolver at the price of 7s. 6d. The dummy revolver was an article in shape and appearance similar to an ordinary revolver but possessing a solid imitation barrel bored for a distance of ⅜in. only from the one end and possessing at the other end chambers, bored to 1-32in. diameter at the back and about half that diameter at the front and having a vent hole for the escape of gas. It was not in its existing condition capable of discharging a shot, bullet, or other missile, and could only be used with blank cartridges. The magistrate accepted evidence that the dummy revolver could by drilling easily be converted into a weapon capable of firing bullets and of killing a man at a distance of 5 feet. The appellant Reeve was a wholesale merchant and had supplied the dummy revolver to Cafferata. It was contended for the appellants that the dummy revolver was at the time of sale incapable of discharging a missile, and that the mere fact that it could subsequently be converted into a bullet-firing revolver did not bring it within the definition of "firearm" in s. 12 (1) of the Firearms Act, 1920, and that it could not be called "any part thereof," since it was an article complete in itself, conversion only being possible by subtraction and not by addition. It was contended for the respondent that the article was a "firearm" within the definition. By the Firearms Act, 1920, s. 12 (1): ". . . The expression 'firearm' means any lethal firearm or other weapon of any description from which any shot, bullet, or other missile can be discharged, or any part thereof . . ." The magistrate convicted the appellants of the offence charged.

LORD HEWART, C.J., said that everything turned on the definition of "firearm" in the Act of 1920. It was common ground that the article was not at the material time in such a condition that a shot could be fired. The magistrate had held that the article as a whole was part of a firearm within the definition. That was quite a tenable proposition. If something had had to be added to it in order to make it into a complete revolver, the dummy might be said to be part of a revolver, and it seemed to make no difference that the decisive part was not to be an addition from outside but an adaptation of what was already there. But it was easier to support the decision from another point of view. The dummy contained everything else necessary for making a revolver except the barrel, and therefore all the other parts of it except those which required to be bored were "parts thereof" within the meaning of the section. The magistrate had not misdirected himself, and the appeal must be dismissed.

BRANSON and DU PARCQ, JJ., agreed.

COUNSEL: *Henn Collins*, K.C., and *E. Hancock*, for the appellants; *E. Wooll*, for the respondent.

SOLICITORS: *W. Timothy Donovan; F. Venn & Co.*, agents for the *Town Clerk, Liverpool.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

[For Table of Cases previously reported in current volume see page xiv of Advertisements.]

The following members of the Middle Temple have been elected to Harmsworth Law Scholarships of £200 per annum, tenable for three years: Mr. A. D. Farrell (St. Paul's School and Balliol College, Oxford), Mr. A. R. W. Low (Winchester College and New College, Oxford), Mr. R. A. E. Luard (Marlborough College and Christ Church, Oxford), Mr. J. W. Mills (Clifton College and Corpus Christi College, Cambridge), Mr. N. Monro (Eton College and Oriel College, Oxford), Mr. J. G. Monroe (Marlborough College and Oriel College, Oxford), Mr. J. M. A. Ridley (Eton College and Balliol College, Oxford), Mr. E. F. Ryan (Ampleforth College and Trinity College, Cambridge), Mr. D. J. Sheridan (Downside School and Pembroke College, Cambridge).

Correspondence.

[*The views expressed by our correspondents are not necessarily those of* THE SOLICITORS' JOURNAL.]

Service of County Court Summonses.

Sir,—What is to be the position resulting from the amendment of the County Court Rules regarding personal service of summonses by persons other than court bailiffs? The new rule provides that service may be effected by a party to the proceedings or someone in his permanent and exclusive employ or by the solicitor of a party or a solicitor acting as agent of such solicitor or some person in the permanent and exclusive employ of either. Under the old rule, service might be effected by some person employed who might be employed to serve a writ issued out of the High Court.

It would appear to be prohibited in future to employ process servers, and if this is to be the case, the ridiculous situation arises of it being permitted to employ a process server to serve a writ for £100, but forbidden to employ such a person to serve a county court summons for £99 19s. 11d. We imagine few solicitors who have to arrange for process to any great extent will not be prepared to testify to the efficiency of the recognised and reputable firms of process servers and if the new rule is to be strictly enforced it seems to us that the profession will have been done a great disservice. It is our experience that in difficult cases service is impossible unless experts are employed and that bailiffs scarcely ever serve in such circumstances—if, indeed, they can be expected to do so. We are inclined to doubt whether solicitors would welcome an influx of instructions to serve from fellow solicitors: most firms must be too busy and have few facilities for such work involving, in many instances, the time of clerks in what should be their private hours of leisure.

This is a problem which is causing us much concern and we should be interested to have the views of other members of the profession who are also likely to be faced with this situation.

Regent Street, W.1. DAVID BALFOUR & Co.
19th October.

Obituary.

MR. G. BUCKLEY.

Mr. Gilbert Buckley, solicitor, partner in the firm of Messrs. Sale & Co., of Manchester, died on Wednesday, 14th October, at the age of sixty. Mr. Buckley was admitted a solicitor in 1899.

MR. J. H. CHADWICK.

Mr. Joseph Hiram Chadwick, solicitor, of Rochdale, died on Wednesday, 14th October. Mr. Chadwick, who was admitted a solicitor in 1892, had been deputy coroner for twenty years.

MR. G. F. LE GALLAIS.

Mr. G. F. Le Gallais, solicitor, of Jersey, died in London recently at the age of seventy-four. Mr. Le Gallais was admitted a solicitor in 1889, and was Crown Solicitor from 1901 to 1923.

MR. H. L. LLEWELLYN.

Mr. Herbert Lord Llewellyn, solicitor, sole partner in the firm of Messrs. Orgill & Llewellyn, of Norfolk Street, Strand, died on Saturday, 3rd October. Mr. Llewellyn was admitted a solicitor in 1891.

MR. J. NEWBOULT.

Mr. Jack Newboult, solicitor, sole partner in the firm of Messrs. Newall, Duxbury & Newboult, of Skipton, died on Tuesday, 6th October, at the age of forty-four. Mr. Newboult was admitted a solicitor in 1921.

Reviews.

A Digest of the Law of Evidence. By the late Sir James Fitzjames Stephen, Bart., K.C.S.I., D.C.L., one of the Judges of the High Court of Justice. Twelfth Edition, 1936. By Sir Harry Lushington Stephen, Bart., of the Inner Temple, Barrister-at-Law, and Lewis Frederick Sturge, Barrister-at-Law, of the Inner Temple and the Midland Circuit. Crown 8vo. pp. lvi and (with Index) 273. London: Macmillan & Co. Ltd. 7s. 6d. net.

Published sixty years ago, this Digest of the Law of Evidence was at once recognised as a marvellous piece of work, setting out as it did, with logical precision, the rules by which the relevant facts are to be ascertained, the mode in which they can be established, and their effect upon the questions in issue. While other writers on the subject required portly volumes for its treatment, Sir Fitzjames Stephen was able to compress it within the compass of a series of brief propositions, stated with extraordinary lucidity, these being accompanied by cases stripped of their verbosity illustrative of the propositions upon which they were based. That the work proved to be a great success is common knowledge, and that it has continued so is demonstrated by the frequency with which edition after edition and reprints of many of them have been called for by the profession. In this, the twelfth edition, the work has been subjected by the learned editors to a thorough revision and amplification both in the text and the notes to keep it abreast of the recent decisions and statutory changes, and, furthermore, the junior editor has enriched it by contributing a very able essay, for so it must be called, on "Legal relevance in its relation to the theory of Logic"—a short dissertation cogently expressed and deserving careful study notwithstanding the facetious reference in the preface that "while the senior editor is not entitled to credit for such merit as it may possess, his junior colleague is alone responsible for any shortcomings it may contain." If shortcomings it contains we have been unable to detect them, and we must congratulate the editors on the excellent results they have achieved in this new recension, as to which it need only be added that he who would make himself master of the subject cannot do better than—in the language of the collect—read, mark, learn and inwardly digest its contents.

Investment in Property. By Ronald B. Sunnucks, F.A.L.P.A., F.C.I.A., with Forewords by Viscount Bertie of Thame and Sir Enoch Hill. Second Edition. 1935. Crown 8vo. pp. 69. London: The Banbury Publishing Co., 1s. net.

This is an interesting review of the advantages and disadvantages of investing in property as a source of income. It contains a number of useful tables relating to the subject looked at from various aspects.

Books Received.

Justice of the Peace. By Leo Page, of the Inner Temple and South-Eastern Circuit, Barrister-at-Law. 1936. Demy 8vo. pp. (with Index) 315. London: Faber and Faber Limited. 8s. 6d. net.

The International Unification of the Law of Maritime Liens and Mortgages. By Griffith Price, M.A., of Lincoln's Inn, Barrister-at-Law. 1936. Demy 8vo. pp. 24. London: Sweet & Maxwell, Ltd. 2s. 6d. net.

A Treatise on the Law of Income Tax. By E. M. Konstam, one of His Majesty's Counsel, a Judge of County Courts. Seventh Edition, 1936. Royal 8vo. pp. lxxxiii and (with Index) 768. London: Stevens & Sons, Ltd.; Sweet & Maxwell, Ltd. £2 2s. net.

Companies: Forty-fifth General Annual Report by the Board of Trade. 1936. London: H.M. Stationery Office. 4d. net.

The Law Quarterly Review. Vol. LII. No. 208. October, 1936. Edited by A. L. Goodhart, D.C.L., LL.D., Professor of Jurisprudence in the University of Oxford. London: Stevens & Sons, Ltd. 6s. net.

The King and the Imperial Crown. By A. Berriedale Keith, D.C.L., D.Litt., LL.D., F.B.A., of the Inner Temple, Barrister-at-Law; Advocate of the Scottish Bar. 1936. Royal 8vo. pp. xiv and (with Index) 491. London, New York and Toronto: Longmans, Green & Co. 21s. net.

The Law. By The Right Honourable Sir Henry Slesser, a Lord Justice of Appeal. 1936. Crown 8vo. pp. xix and 192. London, New York and Toronto: Longmans, Green & Co. 3s. 6d. net.

The Tithe Act, 1936, and the Rules thereunder. By R. Wynne Frazier, of Gray's Inn and the Midland Circuit, Barrister-at-Law. 1936. Demy 8vo. pp. xvi and (with Index) 204. London, Liverpool and Birmingham; The Solicitors' Law Stationery Society, Ltd. 12s. 6d. net.

Sir Travers Humphreys, His Career and Cases. By Bechhofer Roberts. 1936. Demy 8vo. pp. xiii and (with Index to Cases) 336. Illustrated. London: John Lane, The Bodley Head. 15s. net.

The Housing Act, 1936. A Comparative Table of the Sections and Schedules. By Alfred Fellows, B.A., Cantab., of Lincoln's Inn, Barrister-at-Law. 1936. Demy 8vo. pp. 18. London: Hadden, Best & Co., Ltd. 2s. 6d. net.

Life Law and Letters. By E. S. P. Haynes. 1936. Crown 8vo. pp. xv and 292. London: William Heinemann, Ltd. 7s. 6d. net.

Societies.

The Solicitors' Managing Clerks' Association.

MOTOR INSURANCE—RECENT DECISIONS AND LEGISLATION.

Mr. C. N. Shawcross delivered a lecture on this subject to The Solicitors' Managing Clerks' Association, at a meeting held on the 16th October, at Gray's Inn, with Mr. Bernard Campion in the chair. He explained that he would deal with some decisions and legislation which might not, strictly speaking, come within the scope of motor insurance, but which were frequently important in the practice of motor insurance and the law governing it. The rights of third parties were first protected by the Third Parties (Rights against Insurers) Act, 1930, which provided that where a person or company held a policy of insurance against third party liability and incurred the double misfortune of incurring a liability and becoming insolvent, then the third party automatically succeeded to the rights under the policy. These rights had been held to be no greater than those of the assured—like the rights of injured workmen in similar cases. The third party merely succeeded to the insurance policy, which would set out in large type that the company had assets of millions of pounds but would go on to say that the insurance was subject to the terms, exceptions, warranties, conditions and indorsements contained in the policy. He was also subject to the common law rule that the insurers could avoid the policy if it had been obtained by the suppression or the misrepresentation of a material fact. The Act applied to contractual liabilities, did not apply to infants because they could not be made bankrupt, and only applied to married women since the Law Reform Act, 1935. It applied to all motor insurance cases and was the only Act which gave a third party any rights against insurers if he did not come within the limited class of persons provided for by the Road Traffic Acts. It might even be important to a third party who came within the Road Traffic Acts, if he lost his rights against insurers by failure to give notice under the Road Traffic Act, 1934, s. 10.

The Road Traffic Act, 1930, was an attempt to improve the position of third parties. By s. 36 (1) it forbade the use of a motor vehicle unless the user had in force a policy which covered any liability which might arise out of that use. It excepted a liability to workmen arising at a certain time, to passengers unless they were being carried in certain kinds of vehicles, and contractual liabilities. The words "any

liability " did not mean what they appeared to mean—i.e., any liability except those expressly excepted. In *Gray* v. *Blackmore* [1934] 1 K.B. 95; 77 Sol. J. 765, a man was knocked over by a car which was towing another to the repair works of the owner. The insurance cover excluded use for any purpose connected with the motor trade. The injured person obtained a judgment against the owner, who claimed an indemnity from his underwriters. Branson, J., held that there was no indemnity, because the owner was using the car for the purposes of his motor trade. In the course of his judgment, however, the learned judge defined, though to do so was not necessary for his decision, the scope of the insurance required by the Act. This *dictum* had the curious, if not unique, result of inducing Parliament later to give to the Act of 1930 a far narrower operation than they had seemed at first sight to intend. In the Road Traffic Act, 1934, Parliament had made it clear that they regarded the decision in *Gray's Case* as correct; that the protection given by the 1930 Act to third parties was only such protection as the insurers chose to give within the limits of the cover contained in their policies. The other limitations of the scope of the 1930 Act could not, said Mr. Shawcross, be over-emphasised.

The case of *Malfroot and Syer* v. *Noxal*, 52 T.L.R. 301; 79 Sol. J. 610, although not strictly a case of motor insurance law, was important in practice. The passenger in a side-car was injured by the negligence of the firm who had attached the side-car to the motor cycle. Lewis, J., held that she could recover damages in tort against the firm for breach of the duty which they owed to any passenger to use care in the fixing of the side-car. In *Monk* v. *Warbey*, 50 T.L.R. 263; 78 Sol. J. 782, an owner who lent his car to an uninsured person was held liable for the damage caused to a third party by this breach of his statutory duty. In *Richards* v. *Brain*, 50 Ll.L.R. 132 (C.A.), a car hirer had a policy which excluded driving by Jews, Air Force officers, actors or actresses, turf commission agents, undergraduates and foreigners. He hired a car to a client who did not disclose that he was a Jew, and who injured a third party, and the insurance company successfully repudiated their liability. In an action by the third party against the hirer the Court of Appeal held that there was a cause of action, and that the hirer might be liable for a breach of the statutory duty, although he had acted quite innocently and without knowledge. These three cases, together with the Road Traffic Acts, had completely altered the position which had existed at the time of *Phillips* v. *Britannia Laundry Company* [1923] 1 K.B. 539; 2 K.B. 832; 68 Sol. J. 102. Phillips had been injured by the breakdown of a lorry which belonged to the laundry company and had been negligently repaired by its manufacturers. He had, presumably on advice, not sued the manufacturers, and in an action against the owners of the lorry he had tried to set up a breach of the statutory duty imposed upon them by the Locomotive and Highways Act, 1896, to have their vehicle in a safe condition. It was held, however, that a breach of this duty gave rise to no cause of action in a person injured as a result, because the duty had not been imposed for the benefit of a particular class. Nowadays Phillips could have sued the repairers under *Malfroot's Case* and the owners under *Monk's Case* and *Richards' Case*, because the Road Traffic Acts were expressed by their title to have been passed for the benefit of third parties and the statutory duty they imposed was owed to third parties as well as to the public at large.

The position of a friend driving under a policy issued to the owner of a car had been dealt with in *Tattersall* v. *Drysdale*, 52 Ll.L.R. 21; 79 Sol. J. 418, in which it had been held that s. 36 (4) of the 1930 Act gave the friend the right to enforce the policy directly against insurers. Before this decision it had been thought that the friend had no such right. An important implication of the decision was, moreover, that all the other insurance provisions of the Road Traffic Acts applied only to insurance of the kind required by the Act—i.e., insurance against liability to certain classes of third parties. This sub-section, however, seemed to apply to every kind of liability insurance contained in a motor policy.

Part II of the Road Traffic Act, 1934, remedied by its s. 10 some of the inadequacies of the 1930 Act. It gave a third party the right to make the insurer satisfy a judgment obtained by him against the assured. This right was not given to a third party who was a voluntary passenger in the defendant's car or a workman in his employ; the judgment must be in respect of a liability covered by the policy; and the insurers had a right to obtain a declaration of the court that the policy was void because it had been obtained by suppression or misrepresentation of material facts. If the liability of the assured to the plaintiff was not " covered by the policy," he had no rights. The phrase meant anything not expressly excepted by the policy, unless the exception was dealt with by s. 12, which provided that certain restrictions of the cover should not operate as against the third party. Mr. Shawcross gave examples of the restrictions which took away the rights of the third party: referring to the cases of *Passmore* v. *Vulcan Boiler and General Insurance Company*, 54 Ll.L.R. 92; 80 Sol. J. 167; and, on the question of materiality of representations or omissions, to *Norman* v. *Gresham Insurance Company*, 52 Ll.L.R. 292; *Cleland* v. *London General Insurance Company*, 51 Ll.L.R. 156 (C.A.), *and MacKay* v. *London General Insurance Company*, 51 Ll.L.R. 201; 79 Sol. J. 271. He concluded his lecture by a hopeful suggestion that the Air Navigation Act, 1936, with its thirty-five sections and seven schedules and its regulations as yet unframed, would require judicial interpretation in every detail and would restore the High Court lists to their recent congestion.

The Hardwicke Society.

A meeting of the Society was held on Friday, 16th October, at 8.15 p.m., in the Middle Temple Common Room, the President, Mr. J. A. Petrie, in the chair. Mr. A. L. Ungoed-Thomas moved: " That this House would deplore the triumph of the insurgent forces in Spain." Prince Leonid Lieven opposed. There also spoke Mr. Colin Pearson, Mr. Amphlett, Mr. Henry Mayers, Mr. Goodman, Mr. G. E. Llewellyn Thomas, Mr. A. Newman Hall, Mr. Lewis Sturge, Mr. M. O'Connell Stranders and Mr. Roope. The hon. mover having replied, the House divided, and the motion was carried by three votes.

Upon the occasion of his appointment as a Resident Magistrate in Jamaica, and of his forthcoming departure from England to take up those duties, Mr. Henry Mayers, immediate past-President of the Hardwicke Society, was given a dinner at the Norfolk Hotel on Thursday, the 15th October, at which the following, amongst others, were present: Mr. James A. Petrie (President, in the Chair), Mr. D. Campbell Lee (ex-President), Mr. A. Newman Hall (ex-President), Mr. G. E. Llewellyn Thomas, Mr. Lewis Sturge, Mr. Josiah Oddy, Mr. A. P. McNabb, Commander Stude, Mr. Jardine Brown, Mr. J. Reginald Jones and Mr. J. A. Grieves.

United Law Society.

A meeting of the United Law Society was held in the Middle Temple Common Room on Monday, the 19th October, at 8 p.m. Mr R. J. Kent proposed the motion: " That this House considers that the Law relating to Libel should be altered." Mr. R. E. Ball opposed. Messrs. Lawton, Taylor, Burke, Bartholomew (a visitor), Hill, Rafferty and McQuown also spoke. The motion was put to the House and lost by six votes to eight. There were sixteen present, including three visitors.

Law Students' Debating Society.

At a meeting of the Society, held at The Law Society's Court Room, on Tuesday, 20th October, (Chairman Mr. Q. B. Hurst), the subject for debate was " That this House deplores the decision of the House of Lords in *Sim* v. *Stretch*, 52 T.L.R. 669." Mr. E. V. E. White opened in the affirmative; Mr. W. M. Pleadwell opened in the negative. Mr. J. C. North Lewis seconded in the affirmative; Mr. P. W. Iliff seconded in the negative. The following also spoke; Messrs. G. Roberts, M. C. Batten, Jackson, R. J. A. Temple, G. M. Parbury, E. W. Huddart, J. B. Latey, S. C. Baron and Dr. E. J. Cohn. The opener having replied, and the Chairman having summed up, the motion was lost by two votes. There were eighteen members and eight visitors present.

Rules and Orders.

Order in Council under section 120 of the Land Registration Act, 1925 (15 & 16 Geo. 5. c. 21).

At the Court at Buckingham Palace, the 3rd day of July, 1936.

Present,

The King's Most Excellent Majesty in Council.

Pursuant to section 120 of the Land Registration Act, 1925, His Majesty by and with the advice of His Most Honourable Privy Council is pleased to order and declare, and it is hereby ordered and declared, as follows:—

Registration of title to land is to be compulsory on sale in the Administrative County of Middlesex on and after the first day of January, nineteen hundred and thirty-seven.

M. P. A. Hankey.

Legal Notes and News.

Honours and Appointments.

The King has been pleased to approve a recommendation of the Home Secretary that Sir HENRY CURTIS BENNETT, K.C., be appointed Chairman of the County of London Sessions, to succeed the late Sir Percival Clarke. Sir Henry Curtis Bennett was called to the Bar by the Middle Temple in 1902, took silk in 1919, and became a Bencher of his Inn in 1926.

The King has been pleased to approve the appointment of Mr. ST. JOHN GORE MICKLETHWAIT, K.C., to be Chairman and The Hon. Sir REGINALD COVENTRY, K.C., to be Deputy Chairman of the Middlesex Quarter Sessions, both appointments to take effect from 23rd October, 1936, on the retirement of Sir Thomas Forster, K.C., from the office of chairman. Mr. Micklethwait was called to the Bar by the Middle Temple in 1893, and Sir Reginald Coventry was called by the Inner Temple in 1896.

The Lord Chancellor appointed Mr. BRUCE HUMFREY to be the Registrar of Redhill County Court as from the 1st day of October, 1936.

The Law and City Courts Committee of the Corporation recommend that the salary of the Assistant Judge of the Mayor's and City of London Court, a position rendered vacant by the retirement of Judge Shewell Cooper, shall be £1,600 per annum. It is announced that the Recorder has appointed to the position Mr. Aubrey Ralph Thomas, who was called to the Bar by the Middle Temple in 1902, and has been Recorder of Gloucester since 1932.

Sir John Davidson, G.C.V.O., Chancellor of the Duchy of Lancaster, will appoint Mr. JOHN BENNETT to be Vice-Chancellor of the County Palatine of Lancaster in place of Sir Courthope Wilson, who has tendered his resignation on grounds of ill-health. Mr. Bennett was called to the Bar by Lincoln's Inn in 1900.

Mr. E. I. E. WILLIAMS, solicitor, Town Clerk of Ilkeston, has been appointed Solicitor to the Ilkeston and Heanor Water Board, in succession to the late Mr. Frederic Cattle, B.A., of Heanor, who had been solicitor to the Board since its inception in 1901. Mr. Williams was admitted a solicitor in 1923.

THE SOLICITORS' LAW STATIONERY SOCIETY, LIMITED.

INTERIM DIVIDEND.

An interim dividend of 4 per cent., less income tax, on account of the year 1936, was paid on the 20th October. This is at the same rate as last year, when it was followed by a final dividend of 10 per cent.

Court Papers.

Supreme Court of Judicature.

DATE.	EMERGENCY ROTA.	APPEAL COURT No. I.	GROUP I. MR. JUSTICE EVE. Witness. Part II.	MR. JUSTICE BENNETT. Non-Witness
	Mr.	Mr.	Mr.	Mr.
Oct. 26	More	Jones	*More	Andrews
,, 27	Hicks Beach	Ritchie	*Hicks Beach	Jones
,, 28	Andrews	Blaker	Blaker	Hicks Beach
,, 29	Jones	More	*Jones	Blaker
,, 30	Ritchie	Hicks Beach	*Ritchie	More
,, 31	Blaker	Andrews	Andrews	Ritchie
	GROUP I. MR. JUSTICE CROSSMAN. Witness. Part I.	MR. JUSTICE CLAUSON. Witness. Part I.	GROUP II. MR. JUSTICE LUXMOORE. Non-Witness.	MR. JUSTICE FARWELL. Witness Part II..
	Mr.	Mr.	Mr.	Mr.
Oct. 26	*Ritchie	*Hicks Beach	Blaker	Jones
,, 27	*Blaker	*Andrews	More	Ritchie
,, 38	*Jones	*More	Ritchie	*Andrews
,, 29	Hicks Beach	*Ritchie	Andrews	More
,, 30	*Andrews	Blaker	Jones	Hicks Beach
,, 31	More	Jones	Hicks Beach	Blaker

*The Registrar will be in Chambers on these days, and also on the day when the Court is not sitting.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement, Thursday, 5th November, 1936.

	Div. Months.	Middle Price 21 Oct. 1936.	Flat Interest Yield. £ s. d.	‡Approximate Yield with redemption £ s. d.
ENGLISH GOVERNMENT SECURITIES				
Consols 4% 1957 or after	FA	115½	3 9 3	2 19 3
Consols 2½%	JAJO	85½	2 18 6	—
War Loan 3½% 1952 or after	JD	108	3 4 10	2 17 4
Funding 4% Loan 1960-90	MN	117½	3 8 1	2 19 5
Funding 3% Loan 1959-69	AO	102¼	2 18 8	2 17 2
Funding 2½% Loan 1956-61	AO	93¾	2 13 4	2 17 3
Victory 4% Loan Av. life 23 years	MS	115½	3 9 3	3 1 0
Conversion 5% Loan 1944-64	MN	118	4 4 9	2 3 11
Conversion 4½% Loan 1940-44	JJ	110	4 1 10	2 7 2
Conversion 3½% Loan 1961 or after	AO	108	3 4 10	3 0 7
Conversion 3% Loan 1948-53	MS	104¼	2 17 6	2 11 0
Conversion 2½% Loan 1944-49	AO	101¼	2 9 4	2 6 3
Local Loans 3% Stock 1912 or after	JAJO	97⅝	3 1 5	—
Bank Stock	AO	381	3 3 0	—
Guaranteed 2¾% Stock (Irish Land Act) 1933 or after	JJ	89½	3 1 5	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	97	3 1 10	—
India 4½% 1950-55	MN	115xd	3 18 3	3 3 1
India 3½% 1931 or after	JAJO	99½	3 10 4	—
India 3% 1948 or after	JAJO	88	3 8 2	—
Sudan 4½% 1939-73 Av. life 27 years	FA	118	3 16 3	3 9 3
Sudan 4% 1974 Red. in part after 1950	MN	114½	3 9 10	2 14 10
Tanganyika 4% Guaranteed 1951-71	FA	115	3 9 7	2 13 11
L.P.T.B. 4½% "T.F.A." Stock 1942-72	JJ	110½	4 1 5	2 5 2
Lon. Elec. T. F. Corpn. 2½% 1950-55	FA	96	2 12 1	2 15 6
COLONIAL SECURITIES				
Australia (Commonw'th) 4% 1955-70	JJ	111	3 12 1	3 4 4
*Australia (C'mm'nw'th) 3¼% 1948-53	JD	105	3 11 5	3 4 10
Canada 4% 1953-58	MS	113	3 10 10	3 0 2
*Natal 3% 1929-49	JJ	102	2 18 10	—
*New South Wales 3½% 1930-50	JJ	102	3 8 8	—
*New Zealand 3% 1945	AO	100	3 0 0	3 0 0
Nigeria 4% 1963	AO	115	3 9 7	3 3 4
*Queensland 3½% 1950-70	JJ	102	3 8 8	3 6 2
South Africa 3½% 1953-73	JD	108	3 4 10	2 18 0
*Victoria 3½% 1929-49	AO	101	3 9 4	—
CORPORATION STOCKS				
Birmingham 3% 1947 or after	JJ	99	3 0 7	—
*Croydon 3% 1940-60	AO	101	2 19 5	2 13 1
Essex County 3½% 1952-72	JD	106½	3 5 9	2 19 8
Leeds 3% 1927 or after	JJ	96	3 2 6	—
Liverpool 3½% Redeemable by agreement with holders or by purchase	JAJO	106	3 6 0	—
London County 2½% Consolidated Stock after 1920 at option of Corp.	MJSD	82	3 1 0	—
London County 3% Consolidated Stock after 1920 at option of Corp.	MJSD	97	3 1 10	—
Manchester 3% 1941 or after	FA	97½	3 1 6	—
*Metropolitan Consd. 2½% 1920-49	MJSD	101	2 9 6	—
Metropolitan Water Board 3% "A" 1963-2003	AO	99	3 0 7	3 0 8
Do. do. 3% "B" 1934-2003	MS	98½	3 0 11	3 1 1
Do. do. 3% "E" 1953-73	JJ	102	2 18 10	2 16 11
Middlesex County Council 4% 1952-72	MN	113½	3 10 6	2 18 7
† Do. do. 4½% 1950-70	MN	115	3 18 3	3 3 1
Nottingham 3% Irredeemable	MN	96	3 2 6	—
Sheffield Corp. 3½% 1968	JJ	108	3 4 10	3 2 0
ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS				
Gt. Western Rly. 4% Debenture	JJ	117	3 8 5	—
Gt. Western Rly. 4½% Debenture	JJ	127½	3 10 7	—
Gt. Western Rly. 5% Debenture	JJ	138½	3 12 2	—
Gt. Western Rly. 5% Rent Charge	FA	135½	3 13 10	—
Gt. Western Rly. 5% Cons. Guaranteed	MA	133½	3 14 11	—
Gt. Western Rly. 5% Preference	MA	124	4 0 8	—
Southern Rly. 4% Debenture	JJ	115	3 9 7	—
Southern Rly. 4% Red. Deb. 1962-67	JJ	112½	3 11 1	3 5 6
Southern Rly. 5% Guaranteed	MA	133½	3 14 11	—
Southern Rly. 5% Preference	MA	124½	4 0 4	—

*Not available to Trustees over par. †Not available to Trustees over 115.
‡In the case of Stocks at a premium, the yield with redemption has been calculated at the earliest date; in the case of other Stocks, as at the latest date.

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RED LODGE, HILLSIDE ROAD,
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Facing Barclays Bank Sports Ground. Overlooking Ealing Cricket Club Ground; five minutes District, Underground, Central London Tube and G.W. Railway Stations.
Particularly fine
MODERN CHARACTER RESIDENCE
With Vestibule and Lounge Hall, Four Reception Rooms, Nine Bedrooms, Billiards Room, Three Bathrooms, Usual Domestic Offices.
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Exceptional Brick-built Garage.
Charming Gardens with Full-size Tennis Court, profusely Stocked and carefully laid out, in all about half an acre.
VACANT POSSESSION ON COMPLETION.
HARRODS

Have received instructions to offer the above for SALE by AUCTION (unless previously sold) at HARRODS ESTATE SALE ROOMS, S.W.1, on THURSDAY, 12th NOVEMBER, 1936, at 2.30 p.m.

Illustrated Auction Particulars with Conditions of Sale and Orders to View may be obtained of the Solicitors, Messrs. Lambert and Hale & Procter, Helena Chambers, Ealing, W.5, and from the Auctioneers—
HARRODS, LTD., 62–64, BROMPTON ROAD, S.W.1.
Surrey Office: West Byfleet.

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The Most Attractive
FREEHOLD MODERN RESIDENCE
Containing Hall, Cloak Room, Two Reception Rooms, Sun Parlour, Five Bedrooms, Two Bathrooms, Compact Offices.
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On THURSDAY, 12th NOVEMBER, 1936, at 2.30 p.m.

Illustrated Auction Particulars, with Conditions of Sale and Order to View may be obtained from the Solicitors Messrs. Langhams, 10, Bartletts Buildings, Holborn Circus, E.C.4, and of the Auctioneers
HARRODS, LTD., 62–64, BROMPTON ROAD, S.W.1.
Surrey Office: West Byfleet.

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AT LOW RESERVE.
FULHAM.
29, WATERFORD ROAD, S.W.6.
SEMI-DETACHED EIGHT-ROOMED HOUSE with LARGE GARAGE.
Suitable for Builder's Yard, Commercial Garage or similar purpose.
VACANT POSSESSION.
HELD ON A TERM HAVING ABOUT 20 YEARS UNEXPIRED AT A GROUND RENT OF £5 5s. PER ANNUM.
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LARGE GARAGE & STABLING, WITH FOUR-ROOMED FLAT OVER.
Suitable for conversion into Cottage or large Garden.
HELD FOR A TERM HAVING ABOUT 36 YEARS UNEXPIRED, AT A GROUND RENT OF £20 PER ANNUM.
VACANT POSSESSION.
Solicitors: Halsey, Lightly & Hemsley, 32, St. James's Place, St. James's Street, S.W.1.

TO BE OFFERED BY AUCTION AT THE LONDON AUCTION MART, 155, QUEEN VICTORIA STREET, E.C.4, on THURSDAY, 5th NOVEMBER, 1936, at 2.30 p.m.
Particulars and Conditions of Sale from the SOLICITORS, or from the AUCTIONEERS,
CHESTERTON & SONS, 116, Kensington High Street, W.8.

FLEURET, HAXELL, MARKS & BARLEY
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An illustrated Prospectus, giving fees, which are strictly moderate, may be obtained upon application to the Secretary.
The Convalescent Branch is Hove Villa, Brighton, and is 200 feet above sea level.

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WEST HAM, EAST HAM, LEYTON, LEYTONSTONE, SEVEN KINGS & ILFORD.

Messrs.

T. H. LETHABY & CO.

of

19, HIGH ROAD, ILFORD, ESSEX,

have received instructions to submit the undermentioned FREEHOLD AND LEASEHOLD INVESTMENTS to PUBLIC AUCTION, at the LONDON AUCTION MART, 155, Queen Victoria Street, E.C.4, on THURSDAY, 5th NOVEMBER, 1936, at 2.30 p.m.,

52 FREEHOLD DWELLING HOUSES,

forming attractive and remunerative Investments :—

43–49 (odd), 36–42, 46–50 and 54–74 (even), BELMONT PARK ROAD, E.10.
5 and 7, MAYVILLE ROAD, E.11.
108, FRITH ROAD, E.11.
9–13 and 21 (odd), STATION STREET, E.15.
116–126 (even), ASHVILLE ROAD, E.11.
65A, 67–77 (odd), MILLAIS ROAD, E.11.
7 and 9 LESLIE ROAD, E.11.

Let on Weekly Tenancies (Nos. 36, 46, 64, 66, 45 and 47, Belmont Park Road, 67, 69, Ground Floors, 71 and 73, Millais Road, 9, Leslie Road, and Ground Floor of No. 7 are registered as de-controlled). Together producing gross Rentals amounting to

Per £2,259 Annum.

FREEHOLD GROUND RENTS amounting to Per £115 Annum,

Secured upon the undermentioned Dwelling-houses—

43, 45 and 47, COLCHESTER ROAD, E.10.
44, BELMONT PARK ROAD, E.10.
66, CRANMER ROAD, E.7.
36–50 (even), LAWRENCE ROAD, E.6.
13, 15 and 17, PARR ROAD, E.6.
2, TAVISTOCK ROAD, E.15.
102 and 106, WESTWOOD ROAD, SEVEN KINGS.
178, 182 and 184, UPHALL ROAD, ILFORD.
140 and 142, COVENTRY ROAD, ILFORD.
146 and 148, SHERINGHAM AVENUE, MANOR PARK.

Together producing actual and estimated Rack Rentals amounting to about

Per £1,070 Annum.

LEASEHOLD MAIN ROAD SHOP AND PREMISES, 86, HIGH ROAD, E.15 (in the Parish of Leyton), Let on full Repairing Lease at per £50 Annum.

Particulars and Conditions of Sale may be obtained from the Auctioneers, Messrs. T. H. LETHABY & CO F.A.I., 19, High Road, Ilford ('Phone : ILFORD 2260), and at Romford Road, Forest Gate, E.7.

FOR SALE BY AUCTION

WEDNESDAY, NOVEMBER 18th,

at the LONDON AUCTION MART, 155, QUEEN VICTORIA STREET, E.C.4.

No. 5,

OLD COMPTON ST., W.

FREEHOLD INVESTMENT

Close to Cambridge Circus.
One door from Charing Cross Road.

SHOP AND UPPER PART

Producing a Gross Total Income of

£473 Per Annum.

(including £52 per annum estimated).

Auctioneers : Messrs.

HILLIER, PARKER, MAY & ROWDEN,

27, MADDOX STREET, W.1. 'Phone: Mayfair 7666.

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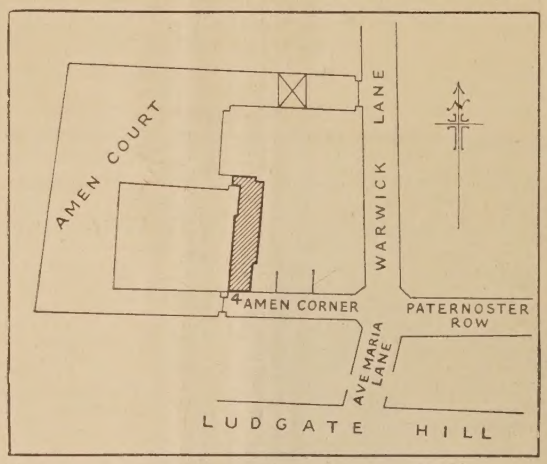
37-38, FENCHURCH STREET, E.C.3.

AT THE LONDON AUCTION MART, 155, QUEEN VICTORIA STREET, E.C.4.

On THURSDAY, 19th NOVEMBER, 1936, at 2.30 p.m.



By Order of Trustees.

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HAVING AN AREA OF ABOUT

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SUBURBAN FREEHOLD GROUND RENTS of £137 10s. in lots,

AND

FREEHOLD CORNER SHOP AT HERNE HILL STATION with possession.

BY ORDER OF EXECUTORS.

FREEHOLD GROUND RENTS

in 7 Lots.

	Rev.	G. R.
WALTHAMSTOW.—21 & 23, COLERIDGE RD., & 1a, RUSSELL RD.	61 yrs.	£14 p.a.
148 & 150, PALMERSTON RD.	61 yrs.	£10 p.a.
WEST HAM.—67 & 69, WAGHORN RD.	62 yrs.	£10 p.a.
71 & 73, WAGHORN RD ..	62 yrs.	£10 p.a.
HACKNEY.—7, 8, 9 & 10, BOWER RD. and 5 & 7, CHAPMAN RD. ..	35½ yrs.	£30 p.a.
BETHNAL GREEN.—13, 15, 17, 19, 21 & 23, PUNDERSON'S GARDENS, BETHNAL GREEN RD.	68 yrs.	£31 10s. p.a.
BATTERSEA.—13, 15 & 17, TOTTERIDGE RD., BATTERSEA ..	41 yrs.	£12 p.a.

BY ORDER OF TRUSTEES.

TWO FREEHOLD GROUND RENTS

each of £10 per ann. secured on

STEPNEY.

2, 4 and 6, ESSEX STREET, and

4, 5, 6, 7 and 8, HARDY'S PLACE.

Between Cambridge Road and Globe Road and close to Bethnal Green Gardens.

Having an approximate total site of

1,875 sq. ft.

with reversion in the year 1938.

Solicitors : Messrs. BADDELEY, WARDLAW & Co., 77, Leadenhall St., E.C.3.

BY DIRECTION OF TRUSTEES.

HERNE HILL STATION.

FREEHOLD CORNER SHOP AND PREMISES.

21, RYMER STREET,

with FRONTAGE of about 72 feet to RAILTON ROAD, short return frontage to Rymer Street, and comprising shop, living rooms, stable buildings or garage, yard in rear, a second yard with double gates to Railton Road.

Site Area about 1,920 sq. ft. WITH POSSESSION.

Solicitors : Messrs. HANBURY, WHITTING & INGLE, 62, New Broad St., E.C.2.

TO BE SOLD BY AUCTION

At the LONDON AUCTION MART, 155, Queen Victoria Street, E.C.4, on WEDNESDAY, 4th NOVEMBER, 1936, at 2.30 p.m.

THE IMPORTANT INVESTMENT arising from

SEVENTEEN FREEHOLD HOUSES

known as

56/64 and 68/90 (even), CLAPTON COMMON, E.5.

All let, and producing a Gross Income of

Per £1,846 4s. Annum.

Tenants paying Outgoings.

Particulars and Conditions of Sale from the Auctioneers,

CHAMBERLAIN & WILLOWS,

Estate House : 23, MOORGATE, E.C.2. Metro 5441 (6 lines).

And at 1, STAMFORD HILL, N.16. Stamford Hill 4667.

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